



# California Regulatory Notice Register

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## PROPOSED ACTION ON REGULATIONS

### TITLE 2. COMMISSION ON STATE MANDATES

*General Cleanup Provisions — Notice File Number Z2021-0125-04* ..... 125

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

#### Amendment

#### Multi County:

Napa Valley Community College District

Compass Charter Schools

*Conflict-of-Interest — Notice File Number Z2021-0126-01* ..... 129

### TITLE 7. BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN

*Amendments to Fitness Regulations — Notice File Number Z2021-0125-03* ..... 130

### TITLE 10. DEPARTMENT OF INSURANCE

*CAARP PLAN OF OPERATIONS — Notice File Number Z2021-1026-07* ..... 134

### TITLE 14. FISH AND GAME COMMISSION

*Klamath River Basin Sport Fishing — Notice File Number Z2021-0125-01* ..... 137

### TITLE 14. FISH AND GAME COMMISSION

*Central Valley Sport Fishing — Notice File Number Z2021-0125-02* ..... 141

### TITLE 15. BOARD OF PAROLE HEARINGS

*Parole Consideration Procedures for Life Prisoners and*

*Nonlife 1168 Prisoners — Notice File Number Z2021-0126-03* ..... 144

(Continued on next page)

***Time-  
Dated  
Material***

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS <i>Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction — Notice File Number Z2021–0121–01</i> .....	147
TITLE 17. AIR RESOURCES BOARD <i>Consumer Products Amendments — Notice File Number Z2021–0119–04</i> .....	150
TITLE 19. OFFICE OF EMERGENCY SERVICES <i>California Accidental Release Prevention (CalARP) Regulations — Notice File Number Z2021–0126–05</i> .....	160
<b>PETITION DECISIONS</b>	
DEPARTMENT OF CORRECTIONS AND REHABILITATION <i>Petition Decision Concerning Request from Melvin Williams Regarding Post Traumatic Slave Syndrome</i> .....	162
DEPARTMENT OF PESTICIDE REGULATION <i>Decision on Reconsideration (Petition by Daniel A. Raichel and Samuel D. Eisenberg (on behalf of Natural Resources Defense Council, Californians for Pesticide Reform, Center for Biological Diversity, Friends of the Earth, Pesticide Action Network North America, and the Xerces Society for Invertebrate Conservation)) Concerning Regulating Neonicotinoid–Treated Seeds</i> .....	163
<b>OAL REGULATORY DETERMINATION</b>	
DEPARTMENT OF STATE HOSPITALS <i>2021 OAL DETERMINATION NUMBER 1 Department of State Hospitals Administrative Directive No. 610, titled “Patient Property.”</i> .....	166
<b>AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS</b>	
DEPARTMENT OF SOCIAL SERVICES <i>Precedential Decisions Index</i> .....	168
<b>SUMMARY OF REGULATORY ACTIONS</b>	
Regulations filed with Secretary of State .....	169

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. COMMISSION ON STATE  
MANDATES**

The Commission on State Mandates (Commission) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Commission has not scheduled a public hearing for this proposed action. However, if it receives a written request for a public hearing from any interested person or their authorized representative no later than 15 days before the close of the written comment period, by March 8, 2021, the Commission will conduct a public hearing on this proposed action on March 26, 2021, and will notify all persons of the date, time, and location of the hearing pursuant to Government Code section 11346.8(a).

**WRITTEN COMMENT PERIOD**

Any interested person or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The comment period closes at **5:00 p.m. on March 22, 2021**. The Commission will only consider written comments received at the Commission offices by that time. Commenters are strongly encouraged to submit their written comments electronically if possible (to prevent the spread of COVID-19) via the Commission website “Drop Box” at: <http://www.csm.ca.gov/dropbox.php>. Written comments may also be submitted to:

Jill Magee, Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Phone: (916) 323-3562

**AUTHORITY AND REFERENCE**

Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations.

Reference citations: Government Code sections 11123, 11346.4, 11347, 11347.1, and 17500 et seq.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

The Commission on State Mandates (Commission) is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Government Code section 17500 et seq.) and to hear matters involving county applications for a finding of significant financial distress (Welfare and Institutions Code section 17000.6).

The purpose of this rulemaking is to generally clean-up, clarify, and streamline Commission regulations and update language for consistency. The proposed regulations: (1) add a definition of “normal business hours” to clarify the Commission’s normal business hours from 8 a.m. until 5 p.m. of each day from Monday to Friday, excluding state holidays, and that 5 p.m. is the filing cutoff for new filings and written materials to be deemed filed that day; (2) clarify the requirements for test claim filing; (3) clarify that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarify the process for rejecting or dismissing a test claim for lack of jurisdiction; (4) clarify that service charge and assessment authority are to be included as offsetting revenues and reimbursements in parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution; (5) clarify the evidentiary standard for requests for extension of time and postponement of hearing; (6) make minor, non-substantive consistency edits, corrections; and (7) update reference citations.

Therefore, the Commission proposes revised language and citations in Articles 1, 3, 5, and 7 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 (Sections 1181.2, 1181.3, 1181.4, 1183.1, 1183.7, 1183.17, 1185.2, 1185.3, 1185.4, 1187.9) with a proposed effective date of October 1, 2021.

*Anticipated Benefits of the Proposed Regulation*

The specific benefits anticipated from the proposed regulations are: clarifying the Commission’s “normal business hours” for purposes of determining the date and time of filing new filings and written materials with the Commission; clarifying the requirements for test claim filing; clarifying that test claims and incorrect reduction claims may be either rejected or dismissed for lack of jurisdiction and clarifying the processes for dismissing and rejecting test claims filed by ineligible claimants; clarifying the offsetting revenues and reimbursements which must be included in parameters and guidelines; clarifying the evidentiary standards applicable to requests for extensions of time

and postponement of hearings; increased accessibility in the mandates process for local agencies, school districts, state agencies, and interested parties/ persons participating in the Commission's processes; consistency in the use of terms; improved readability; and a more complete and accurate listing of references.

*Consistency and Compatibility with Existing State Regulations*

After conducting a review of existing regulations, the Commission has concluded that California Code of Regulations, title 2, sections 1181.1 et seq., are the only regulations concerning the Commission's process. Therefore, the proposed regulations are consistent and compatible with existing state regulations.

**DESCRIPTION OF PROPOSED REGULATIONS**

**I. Add a Definition of "Normal Business Hours" to Section 1181.2 and Clarify Filing Cutoff Times in Section 1181.3.**

*Section 1181.2. Definitions; Section 1181.3. Certification, Filing, and Service of Written Materials and New Filings.*

The proposed amendments to section 1181.2(f) and section 1181.3(c) of the regulations are intended to clarify the Commission's normal business hours, which are the hours that the Commission's office is open: from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays. This is consistent with Government Code section 11020(a), which requires all state agency offices to remain open, at a minimum and subject to certain exceptions not applicable to the Commission, from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays.

Section 1181.2(f) defines "filing date" as the date received at the Commission's office during normal business hours. The definition of "normal business hours" is being added to section 1181.2(f) to clarify that the Commission's normal business hours are from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays.

The proposed addition of subdivision (c)(3) to section 1181.3 is to clarify that new filings and written materials filed with the Commission must be filed no later than 5 p.m. on a business day to be deemed filed that day.

**II. Clarify the Requirements for Test Claim Filing in Section 1183.1.**

*Section 1183.1. Test Claim Filing.*

The proposed changes clarify that test claims must comply with the requirements of Government Code sections 17551 and 17553 and must be filed by a person who meets the requirements of subdivision (a). Removing "may file" from subdivision (a) is intended to clarify that the individual who files the test claim

on behalf of a local agency or school district must fall into one of the categories enumerated in subdivision (a)(1)–(5). This change is consistent with 1185.1(a), pertaining to who may file an incorrect reduction claim on behalf of a local agency or school district. Language is proposed to be added to subdivision (f) to clarify that for a test claim to be considered complete, the requirements of Government Code section 17553 and section 1183.1 of the Commission's regulations must be met. The proposed amendments also move the requirements for when a test claim may be filed as a joint effort from subdivision (g) to subdivision (b) for greater readability and clarity. Current subdivision (g) is eliminated, and current subdivision (h) is renumbered as subdivision (g).

**III. Clarify Rejection and Dismissal for Lack of Jurisdiction of Test Claims in Section 1183.1 and of Incorrect Reduction Claims in Sections 1185.2, 1185.3, and 1185.4.**

*Section 1183.1. Test Claim Filing; Section 1185.2. Review of Incorrect Reduction Claims; Section 1185.3. Consolidation of Claims Initiated by an Individual Claimant; Section 1185.4. Joining a Consolidated Incorrect Reduction Claim.*

The proposed changes to proposed section 1183.1(g) (which is being renumbered from 1183.1(h)) are intended to clarify that when the Commission lacks jurisdiction to hear and determine a timely and otherwise complete test claim filed by a local agency that is not eligible to claim reimbursement under article XIII B, section 6 because it is not subject to the tax and spend provisions of articles XIII A and B of the California Constitution, the test claim must proceed under section 1187.14, which requires notice, the opportunity for an eligible claimant to take over the claim by a substitution of parties, a written comment period on the proposed dismissal, and a hearing by the Commission to dismiss the claim if no party is substituted in.

Sections 1185.2, 1185.3, and 1185.4 pertain to incorrect reduction claim filings. These regulations currently provide that an incorrect reduction claim, consolidated incorrect reduction claim, or notice of intent to join a consolidated incorrect reduction claim, respectively, or portions thereof, may be dismissed by the executive director for lack of jurisdiction with a written notice explaining the reason for the dismissal. The proposed changes to these regulations make them consistent with the proposed language in proposed section 1183.1(g) (renumbered from 1183.1(h)) by clarifying that incorrect reduction claims may be rejected before the claim is deemed complete or dismissed by the executive director for lack of jurisdiction with a written notice explaining the reason for the rejection or dismissal.

**IV. Clarify Offsetting Revenues to be Included in Parameters and Guidelines.**

*Section 1183.7(g). Content of Parameters and Guidelines.*

Section 1183.7 of the regulations governs the content of parameters and guidelines, which must describe the claimable reimbursable activities and costs and contain specified information, including offsetting revenues and reimbursements that are required to be deducted from the costs claimed. The proposed amendments are intended to clarify in section 1183.7(g)(4) that, in addition to fee authority, service charge and assessment authority to offset mandate costs are offsetting revenues that reduce the cost of reimbursable activities and which must be identified in the parameters and guidelines consistent with the purpose of article XIII B, section 6 of the California Constitution.

Article XIII B, section 6 was specifically designed to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>1</sup> Article XIII A imposes a limit on state and local power to adopt and levy taxes. Article XIII B “restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’”<sup>2</sup> Article XIII B defines “proceeds of taxes” that are subject to the appropriations limit to include all tax revenues, as well as those revenues from regulatory licenses, user charges, and user fees but only “to the extent such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service.”<sup>3</sup> Article XIII B does not place limits on revenues that do not constitute a local entity’s “proceeds of taxes.”<sup>4</sup> Revenues that do not constitute a local entity’s “proceeds of taxes” include federal funds; and service charges, fees, or assessments.<sup>5</sup>

Thus, when a local government funds the mandated activities with funds that are *not* its proceeds of

taxes (e.g., service charges, fees, or assessments authorized to be used on the mandate), then those funds are not reimbursable, and must be identified as offsetting revenue. Because service charges, fees, and assessments authorized to be used on the mandate do not constitute “proceeds of taxes,” the language proposed to be added to subdivision (g)(4) clarifies that, in addition to fee authority, service charge and assessment authority to offset mandated program costs must also be identified and deducted from the reimbursement claim.

**V. Clarify the Evidentiary Standards Applicable to Requests for Extensions of Time and Postponement of Hearing in Section 1187.9.**

*Section 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements of Hearings.*

Section 1187.9 of the regulations governs requests for extension of time and requests for postponement of hearing. As section 1187.9(a) and (b) currently exist, a request for extension or postponement must be certified under penalty of perjury in accordance with section 1181.3 declaring that the contents are true and correct to the best of the declarant’s personal knowledge, information, or belief, *and* if the request is based on facts, must also include additional direct evidence supporting that fact (i.e., another declaration or admissible document supporting the fact that is not based solely on hearsay evidence).

The proposed changes to section 1187.9(a) and (b) remove the requirement that declarations or evidence under section 1187.5 accompany a request for extension or postponement that contains representations of fact because the existing requirement to certify the request under penalty of perjury pursuant to section 1181.3 satisfies the evidentiary standards for procedural requests and is consistent with the Administrative Procedures Act, and the Code of Civil Procedure and the Rules of Court for civil actions. The facts contained in a certified request for extension or postponement are submitted under penalty of perjury that the facts are true and correct to the best of the declarant’s personal knowledge, information, or belief, which assures that the facts stated are made in good faith.

**VI. Minor, Nonsubstantive Consistency Edits and Corrections**

The following proposed amendments make minor, nonsubstantive consistency edits or correct usage and errors in sections 1181.4, 1183.17, 1185.2 and 1187.9 of the regulations.

*Update Usage and Increase Clarity*

These amendments are proposed to update usage or improve style and readability, and for consistency with the existing regulations. The proposed amendments to section 1185.2(a), pertaining to completeness of incorrect reduction claims, change the words “any

<sup>1</sup> *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; see also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>2</sup> *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762.

<sup>3</sup> Article XIII B, section 8 of the California Constitution; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>4</sup> Article XIII B, section 8 of the California Constitution; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>5</sup> Article XIII B, sections 8, 9; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 449, 455; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

of the elements in section 1185.1(a) and (b) and (d) through (h)” to “any of the requirements of section 1185.1” to simplify the language and make it consistent with the proposed changes to section 1183.1(f). The amendments also delete unnecessary words in section 1181.4(c)(7) by removing the modifier “Joint Request for” from “Joint Request for Legislatively Determined Mandate.”

In section 1187.9(c)(2), the provision “Continuances will be granted only upon a clear showing of good cause” is moved from the last sentence to the first sentence for greater clarity. The phrase “within the meaning of subdivision (a)” is changed to “as described in subdivision (b)” (reference to subdivision (a) is also changed to subdivision (b), as discussed below) and is moved to the end of the new first sentence to clarify where the description of “good cause” for purposes of this subdivision is located.

*Correct Minor Errors*

These amendments are also proposed to correct errors in the current regulations, including changing the reference in section 1183.17(a)(5) from “section 1183.1(d)” to “section 1183.7(d)” to correct a typographical error and the reference in section 1187.9(c)(2) from “subdivision (a)” to “subdivision (b)” because that is where the description of good cause is located.

**VII. Update to Reference Citations in Sections 1181.2 and 1181.3.**

*Section 1181.2. Definitions; Section 1181.3. Certification, Filing, and Service of Written Materials and New Filings.*

The proposed amendments to the reference statutes for sections 1181.2 and 1181.3 add Government Code section 11020(a), which provides that “[u]nless otherwise provided by law, all offices of every state agency shall be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays.”

**TECHNICAL, THEORETICAL, AND/  
OR EMPIRICAL STUDY, REPORTS, OR  
DOCUMENTS RELIED UPON TO  
DEVELOP REGULATIONS**

Commission staff did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations. The Commission relied upon the statutes and cases cited in the authority and reference sections for the regulations.

**DISCLOSURES REGARDING THE  
PROPOSED ACTION**

The Commission has made the following initial determinations:

Mandate on local agencies and school district: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non–discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

*Results of the Economic Impact Analysis/Assessment*

The Commission concludes that the proposal will: (1) not create or eliminate jobs within California; (2) not create new businesses or eliminate existing businesses within California; and (3) not affect the expansion of businesses currently doing business within California.

*Small Business Determination*

Because the Commission has no jurisdiction over small businesses and small businesses are not parties before the Commission, the proposed regulatory action will have no impact on small businesses.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost–effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

**CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Jill Magee, Program Analyst  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, CA 95814  
 Telephone: (916) 323-3562  
[jill.magee@csm.ca.gov](mailto:jill.magee@csm.ca.gov)

The backup contact person for these inquiries is:

Heidi Palchik, Assistant Executive Director  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, CA 95814  
 Telephone: (916) 323-3562  
[heidi.palchik@csm.ca.gov](mailto:heidi.palchik@csm.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information on which the rulemaking is based to Ms. Jill Magee (see contact information above) or download it from the Commission’s website at <http://www.csm.ca.gov/rulemaking.php>.

**AVAILABILITY OF STATEMENT OF REASONS, AND TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings.

Copies may be obtained on the Commission’s website (see below) or by contacting Ms. Jill Magee (see contact information above). All persons on the Commission’s interested persons mailing list will be provided a copy of the rulemaking file by making it available on the Commission’s website and providing notice of how to locate it.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT AND DOCUMENTS RELIED ON**

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are

sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) and any documents relied on available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations or documents relied on to the attention of Ms. Jill Magee (see contact information above). The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons and any Documents Relied Upon may be obtained by contacting Ms. Jill Magee at the address, phone number, or email address listed above.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through the Commission’s website at <http://www.csm.ca.gov/rulemaking.php>.

**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

**CONFLICT-OF-INTEREST CODES**

**AMENDMENT**

**MULTI COUNTY:**

Napa Valley Community College District  
 Compass Charter Schools

A written comment period has been established commencing on February 5, 2021 and closing on March 22, 2021. Written comments should be directed to the Fair Political Practices Commission, Attention Amanda Apostol, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission’s Executive Director for his review, unless any interested person or his or her duly autho-

rized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than March 22, 2021. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### **COST TO LOCAL AGENCIES**

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not “costs mandated by the state” as defined in Government Code Section 17514.

#### **EFFECT ON HOUSING COSTS AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### **AUTHORITY**

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### **REFERENCE**

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act

and amend their codes when change is necessitated by changed circumstances.

#### **CONTACT**

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

#### **AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

### **TITLE 7. BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN**

Notice is hereby given that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

The Board proposes to amend the following sections of the California Code of Regulations, Title 7, Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun:

- § 202. Other Definitions.
- § 217. Purpose of Fitness Regulations.
- § 217.5. Duty to Submit to Medical Assessment; Overall Standards.
- § 217.10. Events Requiring Medical Assessment.
- § 217.15. Description of Medical Assessment; Detailed Standards.
- § 217.20. Duty to Report Medical Information.
- § 217.25. Fitness Determination by Board-Appointed Physicians Following Receipt of Medical Information.
- § 217.30. Board-Initiated Fitness Determination.
- § 217.35. Consequences of Not Fit for Duty Determination.
- § 217.40. Proceedings Following Fitness Determinations.



- § 217.45. Qualification Standards for Board–Appointed Physicians; Duties of Physicians.

The Board proposes to add a new section to its regulations:

- § 217.37. Reevaluation of Pilots on Medical Disability Leave.

**PUBLIC HEARING**

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, not later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (415) 397–9463 or by e–mail to [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov). The written comment period closes at **5:00 p.m. on March 23, 2021**. The Board will consider only comments received at the Board office by that time. Submit comments to:

Allen Garfinkle, Executive Director  
 Board of Pilot Commissioners for the Bays of  
 San Francisco, San Pablo, and Suisun  
 660 Davis Street  
 San Francisco, California 94111

**AUTHORITY AND REFERENCE**

Authority: Harbors and Navigation Code (HNC) §§ 1154 and 1171.5 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific HNC §§ 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182, and 1183.

**INFORMATIVE DIGEST/POLICY  
 STATEMENT OVERVIEW**

**Existing Law and Effect of Proposed Amendments**

HNC section 1176 requires that pilots and pilot trainees be examined by Board–appointed physicians to evaluate their fitness to perform their duties. Board regulations set forth in Title 7 of the California Code of Regulations, sections 217 through 217.45, require that (1) pilots and pilot trainees be mentally and physically fit, (2) set forth the means of evaluating fitness, and (3) prescribe the intervals at which the fitness evaluations are to be performed.

The current fitness regulations, which became effective in 2014, substantially expanded and improved the Board’s program for fitness evaluation. The Board now has over six years of experience with this new regime for evaluating fitness and has determined that certain updates, clarifications, and changes are necessary to render the existing system more effective and efficient.

In summary, the updates, clarifications, and changes are as follows:

- One of the Board’s principal standards for fitness evaluation is the same as that used by the U.S. Coast Guard, which also licenses pilots and certifies their fitness. The Board also uses a Coast Guard form to obtain information from pilots and trainees concerning their medical condition. The Coast Guard’s fitness standards have recently changed, as has the medical information form that a pilot or trainee submits to initiate the fitness evaluation. These amendments will update the regulations to specify the current fitness evaluation standards and the current reporting form used by the Coast Guard.
- Under the current system, a fit–for–duty (FFD) determination is effective for a period of one year unless the pilot or trainee experiences some intervening medical condition that may impair their ability to perform their duties. With certain medical conditions, a physician may wish to re–examine a pilot or trainee at an interval shorter than one year after an FFD determination. A proposed amendment would allow a physician to issue an FFD determination for a period shorter than one year. If the examining physician and the Medical Review Officer (MRO) require reevaluation at different intervals shorter than one year, the shorter interval would be applied.
- Medical assessments and agility tests of trainees are required prior to entry into the training program and annually during the training program. Medical assessments and agility tests are required of pilots prior to licensure as a pilot and prior to annual renewal of a pilot license. To ensure that assessments and tests are conducted close in time to the event requiring the assessment or test, the amendments would specify that a required assessment or test must be commenced and completed within 90 days prior to the triggering event.
- Both the medical assessment and the agility test may also be required by a physician at other times. It sometimes happens that an individual has undergone a medical assessment or agility test shortly before an upcoming event that triggers a requirement that an assessment or agility test be

performed. These amendments would provide that a new assessment or a new test will not be required if a prior assessment or test has been commenced and completed within 90 days prior to the event that would otherwise trigger the need for an assessment or test.

- The amendments clarify that, at the discretion of Board-appointed physicians, the full medical assessment process need not be completed in every case in which a Board-appointed physician determines that a fitness evaluation of a trainee or pilot is required.
- Certain deadlines in the current regulations have proven overly short. Amendments would allow the Board’s Executive Director to extend those deadlines for prescribed periods for good cause shown.
- The current regulations require two fitness determinations, one by the examining physician and one by the MRO. An amendment would eliminate the need for a fitness determination by the MRO if the examining physician has determined that the trainee or pilot is not fit for duty (NFFD).
- This subsection is proposed for addition to the regulations. Pilots and trainees may be required to undergo drug and alcohol tests. Currently, there is nothing in the Board’s regulations requiring the test results to be reported to the Board, nor is there any provision for evaluation of the test results with regard to the fitness of the pilot or trainee who was the subject of the tests. This addition will cure that omission.
- A pilot who is determined NFFD is placed on medical disability leave and may not return to piloting until determined to be FFD. A new proposed regulation would require that pilots on medical disability leave have their fitness reevaluated at intervals of not less than 120 days. This will ensure that the number of pilots available for piloting duties is maximized, so as to reduce potential for fatigue among pilots available for assignment.
- The current regulations require that examining physicians have at least five years of experience in occupational medicine. Because the evaluations of these physicians are subject to review by the Medical Review Officer, who must have at least 10 years of experience in occupational medicine, this standard is overly strict and results in delays, given the limited number of examining physicians with the required experience. The amendment would require that examining physicians have at least one year of experience in occupational medicine.

- Throughout, the proposed amendments would distinguish the *process* for evaluating fitness (“fitness evaluation”) from the *conclusion* concerning fitness (“fitness determination”).
- Where necessitated by the proposed amendments, the Board’s various forms will be amended to conform to the new language of the regulations.

**Anticipated Benefits of the Proposed Regulations**

The broad objective of the proposed amendments to the fitness regulations is to ensure that the Board administers its program for determining the mental and physical fitness of pilots and pilot trainees in a more effective and efficient manner. The amendments will enhance protection of public health and safety and protection of the environment by enacting stricter standards for issuance of fit-for-duty determinations, by maximizing the number of pilots available for assignment, and by rendering the fitness evaluation process quicker and more efficient.

**Determination of Inconsistency/Incompatibility with Existing State Regulations**

The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations or statutes. After conducting a review for any state regulations that would relate to or affect the regulatory sections proposed to be amended, the Board has concluded that these are the only state regulations that concern the fitness for duty of pilots and pilot trainees under the jurisdiction of the Board.

DISCLOSURES AND DECLARATIONS REGARDING THE PROPOSED ACTION

**The Board has made the following determinations:**

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district: None.
- Cost or savings in federal funding to the state: None.
- The amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on housing cost: None.

**Results of the Economic Impact Analysis/Assessment**

The Board has concluded that the proposed regulations will not facilitate the creation or

elimination of jobs within California. The proposed regulations will not affect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed amendments to the fitness regulations will benefit California residents and the state's environment by enacting stricter standards for issuance of fit-for-duty determinations to pilots and pilot trainees, by maximizing the number of pilots available for assignment, and by rendering the fitness evaluation process quicker and more efficient.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons, and equally effective in implementing the statutory policy or other provisions of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, if one is held, or during the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. Written comments will be accepted by the Board until **5:00 p.m., on March 23, 2021**. Submit comments to:

Allen Garfinkle, Executive Director  
Board of Pilot Commissioners for the Bays of  
San Francisco, San Pablo, and Suisun  
660 Davis Street,  
San Francisco, California 94111  
[bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)

#### CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Roma Cristia-Plant  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

The backup contact person for these inquiries is:

Name: Allen Garfinkle  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

Please direct requests for copies of the proposed text (Express Terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Cristia-Plant at the above address.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the above address during normal business hours (9:00 a.m. to 5:00 p.m.). Please contact Roma Cristia-Plant at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. Copies of these items are available upon request from the Board Contact Person designated in this Notice.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the 45-day public comment period, the Board may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Board regarding this proposal, the Board may determine that changes to the proposed regulations are appropriate. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. The Board will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Ms. Cristia-Plant at the above email address. The Board will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

AVAILABILITY OF FINAL  
STATEMENT OF REASONS

The Board is required to prepare a Final Statement of Reasons. Once the Board has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Board Contact Person identified in this Notice.

BOARD INTERNET WEBSITE

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Rulemaking, the Initial Statement of reasons, and the text of the regulations in underline and strikeout can be accessed through the Board's website at [www.bopc.ca.gov](http://www.bopc.ca.gov).

**TITLE 10. DEPARTMENT OF  
INSURANCE**

**REG-2020-00018**

**AUTOMOBILE ASSIGNED RISK PLAN  
PLAN OF OPERATIONS**

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara will hold a public hearing to address the proposed amendments to the California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

AUTHORITY TO ADOPT RULES AND  
PROCEDURES AND REFERENCE

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner's decision on the proposed changes will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Insurance Code Section 11620(c) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the application at the following date, time, and place:

**Date: March 30, 2021**  
**Time: 1:00 p.m.**

**TELEPHONIC PARTICIPATION ONLY**  
Toll-Free Conference Call Telephone  
Number: 844-867-6169  
Participant Access Code: 8021221

**Participants will be given instructions on how to provide testimony once they have accessed the hearing.** The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

**Access to Telephonic Conference Call.** This hearing will be open to the public. To make it possible for the Department to advise attendees of future rulemaking activity, as well as to aid the Department of Insurance in managing attendance, we request that you voluntarily RSVP as soon as possible, preferably by March 25, 2021, by providing your name(s), the name of the organization you represent, and your contact information, including email address of each attendee to [RiordanM@insurance.ca.gov](mailto:RiordanM@insurance.ca.gov). An RSVP is not required to attend the telephonic conference and all attendees are invited to participate regardless of whether there was an RSVP.

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS:  
AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:  
Michael Riordan, Attorney  
California Department of Insurance  
Auto Enforcement Bureau  
1901 Harrison Street 4<sup>th</sup> Floor  
Oakland, CA 94612  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (510) 238-7830

The backup agency contact person for this proceeding will be:

Emily Gallagher, Attorney  
 California Department of Insurance  
 Rate Enforcement Bureau  
 1901 Harrison Street 4<sup>th</sup> Floor  
 Oakland, CA 94612  
[gallagher@insurance.ca.gov](mailto:gallagher@insurance.ca.gov)  
 Telephone: (415) 538-4108

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on March 30, 2021**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail or facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
 Office of the Public Advisor  
 300 Spring Street 12<sup>th</sup> Floor  
 Los Angeles, CA 90013  
 Telephone: (213) 346-6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### CA 20-07

California law requires that all licensed insurers to participate in CAARP. Currently, private passenger applications that come to CAARP are directly assigned to insurers on a percentage basis. The insurer issues personal auto policies, provide policyholder services, and are responsible for claims related to the application. The Limited Assignment Distribution Procedure

(LAD), is a program that allows insurers to contract out of its obligation to service CAARP assignments. By contracting the obligation, the LAD carrier performs the same services for their buy-out companies who do not want to receive direct assignments.

A Private Passenger Pool (“PPP”) will supplement the current private passenger assignment mechanism and provides a means by which AIPSO, as a service provider, can act as a back-up should changes in Plan volume occur or the availability of LAD servicing companies change in the future.

The PPP would operate independently from the direct assignment mechanism and LAD procedure. The CAARP Advisory Committee would allocate a percentage of the Plan private passenger applications to the PPP. AIPSO will adjust assignment volumes directed to the PPP to match the specified percentage of Plan volume over time as Plan volumes fluctuate.

Assignment quotas will continue to be calculated based on the percentage of volume the insurers write. Insurers will continue to take direct assignments. LAD will continue to provide a remedy to insurers who do not want to write and service Plan private passenger applications. Because the quota system will continue to function as if the PPA doesn’t exist, insurer under/over assignment positions will continue to be calculated by the quota system. Participation ratios for insurer shares of PPP operating results will be determined using the same voluntary private passenger nonfleet automobile liability net direct written car years used for quota determination.

All insurers writing voluntary private passenger automobile insurance must participate in PPP. A service provider will issue and service Plan personnel auto insurance policies on behalf of the member companies. The policies are issued in the Plans name with the Plan as the insurer. Premiums, expenses, and losses will be pooled and the operating results shared among insurers writing personal auto policies in the voluntary market. The operating results will be apportioned to member companies through assessments and companies will be able to book their shares as Board and Bureau Expenses.

In addition, specific references to the Electronic Application Submission Interface (EASi) have been replaced with broader generic references that will not require revisions should a transition from EASi to another system occur in the future.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

**LOCAL MANDATE DETERMINATION**

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING**

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACTS ON PRIVATE PERSONS OR ENTITIES**

The Insurance Commissioner has initially determined that the proposal will not affect private person or entities.

**IMPACT ON HOUSING COSTS**

The Insurance Commissioner has initially determined that the application will not affect housing costs.

**IMPACT ON SMALL BUSINESS**

The proposed rate changes could affect small businesses.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The application would not mandate the use of specific technologies or equipment.

**ALTERNATIVES**

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**PLAIN ENGLISH**

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

**TEXT AND INITIAL STATEMENT OF REASONS**

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

**FINAL STATEMENT OF REASONS**

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's web site.

**ACCESS TO RULEMAKING FILE**

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. By prior appointment,

the rulemaking file is available for inspection at 1901 Harrison Street, 6th Floor Oakland, CA 94612, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

**AUTOMATIC MAILING**

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner’s mailing list.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department’s website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

**AVAILABILITY OF MODIFIED TEXT OF REGULATIONS**

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

**TITLE 14. FISH AND GAME COMMISSION**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 265, 270, 315, 316.5, 399 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5 and 2084 of said Code, proposes to amend subsection (b)(50) of Section 7.40, Title 14, California Code of Regulations, relating to Klamath River Basin sport fishing regulations.

**Informative Digest/Policy Statement Overview**

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

*Office of Administrative Law (OAL) rulemaking file 2020–1204–02s, adopted by the Commission on October 14, 2020, but not yet approved by OAL, made significant changes to the inland sport fishing regulations. This proposed rulemaking uses the adopted regulations of OAL file 2020–1204–02s as a baseline for proposed changes.*

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall–run Chinook Salmon (*Oncorhynchus tshawytscha*) through a cooperative system of State,

federal, and tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River Basin (in–river) sport fisheries, which are consistent with federal fishery management goals.

Tribal entities within the Klamath River Basin maintain fishing rights for ceremonial, subsistence, and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the tribes.

**Klamath River Fall–Run Chinook Salmon**

Adult Klamath River fall–run Chinook Salmon (KRFC) harvest allocations and natural spawning escapement goals are established by PFMC. The Klamath River Basin in–river sport salmon fishery is managed using adult quotas.

The KRFC harvest allocation between tribal and non–tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

For the purpose of implementing PFMC adult allocation and California Department of Fish and Wildlife (Department) salmon fishery harvest assessment, within the Klamath River Basin the Department currently considers 23 inches total length as a provisional cutoff. Salmon greater than 23 inches total length are defined as adult salmon (ages 3–5) and salmon less than or equal to 23 inches total length are defined as grilse salmon (age–two).

**PFMC Overfishing Review**

KRFC stocks have been designated as “overfished” by PFMC. This designation is the result of not meeting conservation objectives for this stock. Management objectives and criteria for KRFC are defined in the PFMC Salmon Fishery Management Plan (FMP). The threshold for overfished status of KRFC is a three–year geometric mean less than or equal to 30,525 natural area adult spawners. This overfished–threshold was met for KRFC during the 2015–2017 period. The 30,525 KRFC natural area adult spawners is considered the minimum stock size threshold, per the FMP. The KRFC adult natural area spawning

escapement for 2019 was 20,245 natural area adult spawners, which is below the one-year conservation threshold of 40,700 natural area adult spawners. The most-recent three-year geometric mean is still less than the required 40,700 natural area adult spawners, therefore the KRFC are still considered as an “overfished” stock.

Accordingly, the FMP outlines a process for preparing a “rebuilding plan” that includes assessment of the factors that led to the decline of the stock, including fishing, environmental factors, model errors, etc. The rebuilding plan includes recommendations to address conservation of KRFC, with the goal of achieving rebuilt status. Rebuilt status requires meeting a three-year geometric mean of 40,700 adult natural area KRFC spawner escapement. The plan developed by representatives of NMFS, PFMC, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife (Department), and tribal entities, was submitted to PFMC in February 2019, adopted by PFMC in June 2019 and submitted to NMFS in August 2019. Forthcoming recommendations from the rebuilding plan may alter how KRFC are managed in the future, including changing the in-river allocation number, and/or allocating less than the normal target number.

**KRFC Allocation Management**

The PFMC 2020 allocation for the Klamath River Basin sport harvest was 1,296 adult KRFC. Preseason stock projections of 2021 adult KRFC abundance will not be available from PFMC until March 2021. The 2021 basin allocation will be recommended by PFMC in April 2021 and presented to the Commission for adoption as a quota for the in-river sport harvest at its May 2021 teleconference meeting.

The Commission may modify the KRFC in-river sport harvest quota, which is normally a minimum of 15 percent of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the FMP.

The annual KRFC in-river sport harvest quota is specified in subsection 7.40(b)(50)(D)1. The quota is split between four geographic areas with a subquota for each area, expressed as a percentage of the total in-river quota, specified in subsection 7.40(b)(50)(D)2. For angler convenience, the subquotas, expressed as the number of fish, are listed for the affected river segments in subsection 7.40(b)(50)(E). The in-river sport subquota percentages are as follows:

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec — 17 percent of the in-river sport quota;

2. for the main stem Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth — 50 percent of the in-river sport quota;
3. for the main stem Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat — 16.5 percent of the in-river sport quota; and
4. for the main stem Trinity River downstream of the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River — 16.5 percent of the in-river sport fishery quota.

**Proposed Changes**

Because the PFMC recommendations are not known at this time, ranges are shown in [brackets] in the proposed regulatory text below of bag and possession limits which encompass historical quotas. All are proposed for the 2021 KRFC fishery in the Klamath and Trinity rivers.

The final KRFC bag and possession limits will align with the final federal regulations to meet biological and fishery allocation goals specified in law, or established in the FMP.

**KRFC SPORT FISHERY  
(QUOTA MANAGEMENT)**

Quota: For public notice requirements, the Department recommends the Commission consider a quota range of 0–67,600 adult KRFC in the Klamath River Basin for the in-river sport fishery. This recommended range encompasses the historical range of the Klamath River Basin allocations and allows PFMC and Commission to make adjustments during the 2021 regulatory cycle.

Subquotas: The proposed subquotas for KRFC stocks are as follows:

- Main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec — 17 percent of the total quota equates to [0–11,492];
- Main stem Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth — 50 percent of the total quota equates to [0–33,800];
- Main stem Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat — 16.5 percent of the total quota equates to [0–11,154]; and
- Main stem Trinity River downstream of the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River — 16.5 percent of the total quota equates to [0–11,154].  
Seasons: No changes are proposed for the Klamath River and Trinity River KRFC seasons:
- Klamath River — August 15 to December 31



- Trinity River — September 1 to December 31 Bag and Possession Limits: As in previous years, no retention of adult KRFC is proposed once the subquota has been met.
- Bag Limit — [0–4] Chinook Salmon — of which no more than [0–4] fish over 23 inches total length may be retained until the subquota is met, then 0 fish over 23 inches total length.
- Possession limit — [0–12] Chinook Salmon of which no more than [0–4] fish over 23 inches total length may be retained when the take of salmon over 23 inches total length is allowed.

#### KRSC SPORT FISHERY

The Klamath River Basin also supports Klamath River spring-run Chinook Salmon (KRSC). Presently, KRSC stocks are not managed or allocated by PFMC. No regulatory changes are proposed for the general KRSC opening and closing season dates, and bag, possession and size limits.

#### OTHER CHANGES FOR CLARITY

The Department is proposing additional changes for clarity and consistency, as follows:

1. Throughout the regulatory text in subsection 7.40(b)(50), update the year from 2020 to 2021.
2. In the first paragraph of subsection 7.40(b)(50), delete cross reference to Section 7.00, subsection (a) for consistency with amendments made to Section 7.00 in OAL file 2020–1204–02s (Simplification of Statewide Inland Sport Fishing Regulations).

#### Benefits of the Proposed Regulations

The Commission anticipates benefits to the environment in the sustainable management of Klamath River Basin salmonid resources.

Other benefits of the proposed regulations are conformance with federal fishery management goals, health and welfare of California residents and promotion of businesses that rely on salmon sport fishing in the Klamath River Basin.

#### Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible

with existing State regulations. Commission staff has searched the California Code of Regulations and has found no other State regulations related to sport fishing in the Klamath River Basin.

#### Public Participation

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on **Wednesday, April 14, 2021**, at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916–653–4899.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on **Tuesday, May 11, 2021**, at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916–653–4899.

It is requested, but not required, that written comments be submitted by 5:00 p.m. on April 28, 2021 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on May 6, 2021.** All comments must be received no later than May 11, 2021, during the webinar/teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244–2090.

#### Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov). The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller–Henson, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above–mentioned documents and inquiries concerning the regulatory process to Melissa Miller–Henson or Sherrie Fonbuena at [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number.

**Senior Environmental Scientist, Wade Sinnen, Department of Fish and Wildlife, ([Wade.Sinnen@wildlife.ca.gov](mailto:Wade.Sinnen@wildlife.ca.gov) or (707) 822–5119), has been designated to respond to questions on the substance of the proposed regulations.**

**Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

**Impact of Regulatory Action/Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected to range from minor to no impact on the net revenues to local businesses servicing sport fishermen. If the 2021 KRFC quota is reduced, visitor spending may correspondingly be reduced, and in the absence of alternative visitor activities, the drop in spending could induce some business contraction. If the 2021 KRFC quota remains similar to the KRFC quotas allocated in previous years, then local economic impacts are expected to be unchanged. Neither scenario is expected to directly affect the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses

or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

An estimated 30–50 businesses that serve sport fishing activities are expected to be directly and/or indirectly affected depending on the final KRFC quota. The impacts range from no impact to small adverse impacts.

Depending on the final KRFC quota, the Commission anticipates the potential for some impact on the creation or elimination of jobs in California. The potential adverse employment impacts range from no impact to the loss of 23 jobs. Under all alternatives, due to the limited time period of this regulation's impact, the Commission anticipates no impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

For all of the proposed scenarios, the possibility of growth of businesses to serve alternative recreational activities exists. Adverse impacts to jobs and/or businesses would be less if fishing of other species and grilse KRFC is permitted, than the impacts to jobs and/or businesses under a complete closure to all fishing. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed regulatory action is to increase sustainability in fishable salmon stocks and, consequently, promote the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages a healthy outdoor activity and the consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California's salmonid resources.

The Commission does not anticipate any benefits to worker safety because the proposed action does not affect working conditions.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:  
None.
- (e) Nondiscretionary Costs/Savings to Local Agencies:  
None.
- (f) Programs Mandated on Local Agencies or School Districts:  
None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:  
None.
- (h) Effect on Housing Costs:  
None.

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

**Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**TITLE 14. FISH AND GAME  
COMMISSION**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 265, 270, 315, 316.5, 399 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5 and 2084 of said Code, proposes to amend subsections (b)(4), (b)(43), (b)(66), and (b)(80) of Section 7.40, Title 14, California Code of Regulations, relating to Central Valley sport fishing.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

*Office of Administrative Law (OAL) rulemaking file 2020–1204–02s, adopted by the Commission on October 14, 2020, but not yet approved by OAL, made significant changes to the inland sport fishing regulations. This proposed rulemaking uses the adopted regulations of OAL file 2020–1204–02s as a baseline for proposed changes.*

Current regulations in subsections (b)(4), (b)(43), (b)(66), and (b)(80) of Section 7.40 prescribe the 2020 seasons and daily bag and possession limits for Sacramento River fall–run Chinook Salmon (*Oncorhynchus tshawytscha*; SRFC) sport fishing in the American, Feather, Mokelumne, and Sacramento rivers, respectively. Collectively, these four rivers constitute the “Central Valley fishery” for SRFC for purposes of this document. Each year, the Department of Fish and Wildlife (Department) recommends new Chinook Salmon bag and possession limits for consideration by the Fish and Game Commission (Commission) to align the fishing limits with up–to–date management goals, as set forth below.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The PFMC will develop the annual Pacific coast ocean salmon fisheries regulatory options for public review at its March 2021 meeting and will adopt its final regulatory recommendations at its April 2021 meeting based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season. Based on the April 2021 recommendation by PFMC, the Department will recommend specific bag and possession limit regulations to the Commission at its April 14, 2021 meeting. The Commission will then consider adoption of the Central Valley sport fishing regulations at its May 11, 2021 meeting.

**PROPOSED REGULATIONS**

**Chinook Salmon Bag and Possession Limits**

The Department recognizes the uncertainty of SRFC in–river harvest projections. Therefore, for the 2021 Central Valley fishery, the Department is presenting three regulatory options for the Commission’s consideration to tailor 2021 Central Valley fishery management to target 2021 in–river fisheries harvest projections.

- Option 1 is the most liberal of the three options, and allows take of any size Chinook Salmon up to the daily bag and possession limits.

- Option 2 allows for take of a limited number of adult Chinook Salmon, with grilse Chinook Salmon making up the remainder of the daily bag and possession limits.
- Option 3 is the most conservative option, and allows for a grilse-only Chinook Salmon fishery.

All options would be applicable to the following river segments and time periods:

American River, subsection 7.40(b)(4):

- (B) From the USGS gauging station cable crossing near Nimbus Hatchery to the SMUD power line crossing the southwest boundary of Ancil Hoffman Park, July 16 through October 31
- (C) From the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park to the Jibboom Street bridge, July 16 through December 31
- (D) From the Jibboom Street bridge to the mouth, July 16 through December 16

Feather River, subsection 7.40(b)(43):

- (D) From the unimproved boat ramp above the Thermalito Afterbay Outfall to 200 yards above the Live Oak boat ramp, July 16 through October 31
- (E) From 200 yards above the Live Oak boat ramp to the mouth, July 16 through December 16

Mokelumne River, subsection 7.40(b)(66):

- (A) From Comanche Dam to Elliott Road, July 16 through October 15
- (B) From Elliott Road to the Woodbridge Irrigation District Dam and including Lodi Lake, July 16 through December 31
- (D) From the Lower Sacramento Road bridge to the mouth, July 16 through December 16

Sacramento River below Keswick Dam, subsection 7.40(b)(80):

- (C) From Deschutes Road bridge to the Red Bluff Diversion Dam, August 1 through December 31
- (D) From the Red Bluff Diversion Dam to the Highway 113 bridge, July 16 through December 16.
- (E) From the Highway 113 bridge to the Carquinez Bridge, July 16 through December 16.

The following options are provided for Commission consideration:

**Option 1 — Any Size Chinook Salmon Fishery**

This option is the Department’s preferred option if the 2021 SRFC stock abundance forecast is sufficiently high to avoid the need to constrain inland SRFC harvest.

- Bag limit of [0–4] Chinook Salmon.
- Possession limit — [0–12] Chinook Salmon.

**Option 2 — Limited Adult and Grilse Salmon Fishery**

Bag limit of [0–4] Chinook Salmon of which no more than [0–4] fish over 27 inches total length may be retained.

Possession limit — [0–12] Chinook Salmon of which no more than [0–4] fish may be over 27 inches total length.

**Option 3 — Grilse Salmon Fishery Only**

Bag limit of [0–4] Chinook Salmon less than or equal to 27 inches total length.

Possession limit — [0–12] Chinook Salmon less than or equal to 27 inches total length.

**BENEFITS OF THE PROPOSED REGULATIONS**

The Commission anticipates benefits to the environment in the sustainable management of Central Valley Chinook Salmon resources. Other benefits of the proposed regulations are consistency with federal fishery management goals, health and welfare of California residents, and promotion of businesses that rely on Central Valley Chinook Salmon sport fishing.

**CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS**

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate sport fishing in waters of the state (Fish and Game Code sections 200, 205, 315 and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to Chinook Salmon sport fishing seasons, bag, and possession limits for Central Valley sport fishing.

**PUBLIC PARTICIPATION**

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on **Wednesday, April 14, 2021**, at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916–653–4899.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing,

relevant to this action at a webinar/teleconference hearing to be held on **Tuesday, May 11, 2021**, at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899.

It is requested, but not required, that written comments be submitted by 5:00 p.m. on April 28, 2021 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on May 6, 2021.** All comments must be received no later than May 11, 2021, during the webinar/teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

#### AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov). The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Sherrie Fonbuena at [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number.

**Senior Environmental Scientist, Karen Mitchell, Department of Fish and Wildlife, ([Karen.Mitchell@wildlife.ca.gov](mailto:Karen.Mitchell@wildlife.ca.gov) or (916) 376-1917), has been designated to respond to questions on the substance of the proposed regulations.**

#### AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under

Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### IMPACT OF REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource, while providing inland sport fishing opportunities and thus, the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate significant adverse economic impacts but acknowledges the potential for short-term negative impacts on the creation or elimination of jobs within the state. The Commission anticipates no adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. Minor variations in the bag and possession limits and/or the implementation of a size limit are unlikely to significantly impact the volume of business activity. The loss of up to 42 jobs with Option 3 is not expected to eliminate businesses because reduced fishing days will be

partially offset by opportunities to fish for grilse Chinook Salmon and other species.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a Chinook Salmon sport fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the environment by the sustainable management of Chinook Salmon resources in the Central Valley. The Commission does not anticipate any benefits to worker safety.

Other benefits of the proposed regulations are concurrence with federal fishery management goals and promotion of businesses that rely on Central Valley sport fishing.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

#### EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

#### CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome

to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### TITLE 15. BOARD OF PAROLE HEARINGS

#### BPH RN 21-01

#### PAROLE CONSIDERATION PROCEDURES FOR LIFE PRISONERS AND NONLIFE 1168 PRISONERS

##### Amendment of Sections 2268 Initial Parole Hearing and 2270 Subsequent Parole Hearing

**NOTICE IS HEREBY GIVEN** that the Executive Officer of the Board of Parole Hearings (Board), under the authority granted by Government Code section 12838.4 and Penal Code sections 3052 and 5076.2, authorizes the Board to amend Sections 2268 and 2270 of the California Code of Regulations, Title 15, Division 2, article 4, concerning Parole Consideration Procedures for Life Prisoners and Nonlife 1168 Prisoners.

#### AUTHORITY AND REFERENCE

Government Code section 12838.4 vests the Board with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code section 3052 generally vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code section 5076.2 requires the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

Penal Code section 3041, subdivisions (a)(2) and (d), and Penal Code section 5076.1, subdivision (c) establish the minimum requirement of two-person hearing panels for parole consideration hearings.

Penal Code section 3041.5 establishes the requirements and conditions concerning parole denial periods.

#### PUBLIC COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments rele-

vant to the proposed regulations to the Board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON FRIDAY, FEBRUARY 5, 2021, AND WILL CLOSE ON MONDAY, MARCH 22, 2021.** For comments to be considered by the Board, they must be submitted in writing to the Board's Contact Person identified in this Notice no later than the close of the comment period.

#### CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the Proposed Text of the Regulation, or other information upon which the rulemaking is based to:

**George P. Bakerjian, Senior Staff Attorney**  
 Board of Parole Hearings  
 P.O. Box 4036  
 Sacramento, CA 95812-4036  
 Phone: (916) 322-6729  
 Facsimile: (916) 322-3475  
 E-mail: [BPH.Regulations@cdcr.ca.gov](mailto:BPH.Regulations@cdcr.ca.gov)

If George Bakerjian is unavailable, please contact Assistant Chief Counsel, Heather L. McCray at [Heather.McCray@cdcr.ca.gov](mailto:Heather.McCray@cdcr.ca.gov). In any such inquiries, please identify the action by using the Board's regulation control number **BPH RN 21-01**.

#### NO PUBLIC HEARING SCHEDULED

The Board has not scheduled a public hearing on this proposed regulatory action. The Board, however, will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as written or oral comments presented at a public hearing.

If scheduled, the purpose of a public hearing would be to receive written or oral comments about the proposed regulations. It would not be a forum to debate the proposed regulations, and no decision regarding the permanent adoption of the proposed regulations would be rendered at a public hearing. The members of the Board would not necessarily be present at a public hearing.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On November 4, 2008, the People of the State of California approved Proposition 9, the Victims'

Bill of Rights Act of 2008, otherwise known as Marsy's Law. This measure amended the California Constitution and Penal Code to provide additional rights to victims during criminal, juvenile, and parole matters. Of relevance, Marsy's Law amended Penal Code section 3041.5, subdivision (b), by changing the period for scheduling an inmate's subsequent parole consideration hearing following a denial of parole. Prior to Marsy's Law, inmates denied parole were eligible to receive annual parole consideration hearings; however, the Board had discretion to deny parole for up to two years for non-murderers and up to five years for murderers. Marsy's Law amended Penal Code section 3041.5, subdivision (b), to require the Board to set a denial length of 15, 10, 7, 5, or 3 years following a decision to deny parole.

Drafted prior to Marsy's Law, California Code of Regulations, title 15, sections 2268, subdivision (b), and 2270, subdivision (d), currently permit the Board, when denying parole for more than one year, to defer an inmate's subsequent parole consideration hearing for two, three, four, or five years, in conflict with the Marsy's Law amendments to Penal Code section 3041.5, subdivision (b)(3). Sections 2268, subdivision (b), and 2270, subdivision (d), state in pertinent part, "[the panel] shall make specific written findings stating the bases for the decision to defer the subsequent suitability hearing for two, three, four, or five years." (Cal. Code Regs., title 15, §§ 2268, subdivision (b), 2270, subdivision (d).)

Additionally, prior to 2004, hearing panels were comprised of three members. In accordance, the California Code of Regulations, title 15, section 2270, subdivision (b) still references this prior requirement for three-person panels. However, to reduce a backlog of hearings, the California Legislature amended the Penal Code in 2004 to allow for two-person panels. Penal Code section 3041, subdivision (a)(2), now provides that a hearing panel at a parole consideration hearing must be composed of, at minimum, two or more commissioners or deputy commissioners, only one of which can be a deputy commissioner. Similarly, Penal Code section 5076.1 specifies that the Board may meet and transact business in panels, each of which shall consist of two or more persons, subject to subdivision (d) of Penal Code section 3041. Penal Code section 3041, subdivision (d), provides that, during times when there is no backlog of inmates awaiting parole hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. Thus, this proposed regulation package is also submitted to remove Section 2270, subdivision (b), as it is inconsistent with changes to the Penal Code made after its enactment.

This proposed regulation package is submitted to bring Sections 2268, subdivision (b), and 2270,

subdivision (d), into compliance with the denial length requirements outlined in Penal Code section 3041.5, subdivision (b)(3). Specifically, these sections are amended to harmonize the conflicting text between the Penal Code and regulations concerning the setting of denial lengths following the enactment of Marsy's Law. Additionally, repealing California Code of Regulations, title 15, section 2270, subdivision (b) is necessary to allow the Board to conduct parole hearings using two-person panels and to schedule subsequent hearings without requiring a panel member from the previous hearing.

**ANTICIPATED BENEFITS OF THE  
PROPOSED REGULATIONS**

These amendments will bring the Board's regulations regarding the setting of a denial length in harmony with Penal Code section 3041.5, subdivision (b)(3). Clarifying the process for setting a parole denial length benefits commissioners, hearing participants, and all stakeholders because it provides transparency to the Board's process of setting a denial length following a finding of parole unsuitability, and clarifies how that process will be implemented. This will benefit all stakeholders by clarifying how the Board imposes parole denial lengths.

In addition, these amendments would remove the currently unfeasible requirements of a three-member hearing panels and scheduling subsequent hearing panels to include a member of a prior panel. These changes will benefit all parties by providing the flexibility needed for the Board to conduct hearings as timely as possible and continue to reduce the parole consideration hearing backlog.

**DETERMINATION OF INCONSISTENCY/  
INCOMPATIBILITY WITH EXISTING  
STATE REGULATIONS**

The Board has determined that these proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the Board's requirements in selecting denial length periods following a decision to deny parole and they are the only regulations that concern the number of panel members required to conduct a parole hearing.

**DISCLOSURES REGARDING THE  
PROPOSED ACTION**

**Local Mandates:** The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

**Fiscal Impact Statement:** The Board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None.**
- Cost or savings to any state agency: **None.**
- Other non-discretionary cost or savings imposed on local agencies: **None.**
- Cost or savings in federal funding to the state: **None.**

**Significant Statewide Adverse Economic Impact on Business:** The Board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**Cost Impacts on Representative Private Persons or Businesses:** The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Assessment of Effects on Job and/or Business Creation, Elimination or Expansion:** The Board has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

**Effect on Housing Costs:** The Board has made an initial determination that the proposed action will have no significant effect on housing costs because housing costs are not affected by the internal processes governing the Board's requirements in selecting denial length periods following a decision to deny parole.

**Small Business Determination:** The Board has determined that the proposed regulations do not have a significant adverse economic impact on small business because small businesses are not affected by the setting of denial lengths for inmates denied parole at a parole consideration hearing.

**RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS/ASSESSMENT**

The Board concludes that it is (1) unlikely that the proposed regulations will create or eliminate any jobs in California, (2) unlikely that the proposed regulations will create any new business or eliminate any existing businesses, and (3) unlikely that the



proposed regulations will result in the expansion of businesses currently doing business within the state.

**Anticipated Benefits to the health and welfare of California residents, worker safety, and the state’s environment:** As further explained in the Economic Impact Analysis, contained within the Initial Statement of Reasons, these proposed amendments will bring the Board’s regulations in harmony with statutory law. In addition, the amendments will benefit all stakeholders by providing greater clarity and transparency regarding the process of setting a denial length following the Board’s decision to deny parole, and provide greater clarity regarding the number of panel members required to conduct a parole hearing. Ensuring that parole denial lengths are properly imposed in accordance with Marsy’s Law helps the Board protect and preserve public safety by setting appropriate denial lengths for offenders who remain a current, unreasonable risk to public safety while ensuring due process to all offenders who come under the Board’s jurisdiction. This would allow the Board to maintain a high performing and professional parole hearing and review system that protects California’s communities and is fair to all offenders.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

AVAILABILITY OF PROPOSED TEXT

The Board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 K Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law’s Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulation), the Proposed Text of the Regulation, Initial Statement of Reasons, and the Form 399 (Fiscal and Economic Impact Statement). Copies of any of these documents may be obtained by contacting the Board’s Contact Person identified in this notice at the mailing address, fax number, or email address listed above or by visiting

the Board’s website at: [http://www.cdcr.ca.gov/BOPH/reg\\_revisions.html](http://www.cdcr.ca.gov/BOPH/reg_revisions.html).

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the Board’s website at [http://www.cdcr.ca.gov/BOPH/reg\\_revisions.html](http://www.cdcr.ca.gov/BOPH/reg_revisions.html). If the Board makes modifications, the Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the Board’s Contact Person identified in this notice at the mailing address, phone number, fax number, or email address listed above or by visiting the Board’s website at: [http://www.cdcr.ca.gov/BOPH/reg\\_revisions.html](http://www.cdcr.ca.gov/BOPH/reg_revisions.html).

**TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS**

**CONCERNING SUBSTANTIAL RELATIONSHIP CRITERIA AND CRITERIA FOR REHABILITATION**

**Subject Matter of Proposed Regulations: Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction**

**Sections Affected: California Code of Regulations (CCR), Title 16, Division 4, Sections 316.5, 326, and 327**

**NOTICE IS HEREBY GIVEN** that the Board of Chiropractic Examiners (hereafter “Board”) is proposing to amend regulations described in the Informative Digest below. Any person interested in providing the Board with comments may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by

the Board of Chiropractic Examiners, at its office, by 5:00 p.m., Tuesday, March 23, 2021.

The Board does not intend to hold a hearing on this matter. If any interested party desires that a hearing be held, they must make the request, in writing, to the Board. The request must be received in the Board office no later than 15 days before the close of the written comment period.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 4(b), 4(c), 10(a), 10(b) of the Chiropractic Initiative Act of California Stats. 1923 p. lxxxviii, and to implement, interpret or make specific regulatory revisions as required in sections of 7.5, 480, 481, 482, 488, and 493 of the Business and Professions Code (BPC), the Board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

#### INFORMATIVE DIGEST

The Chiropractic Initiative Act, hereinafter referred to as the Act, section 4(b), authorizes the Board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public. Additionally, in conformity with the intent of Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 7.5, 141, 475, 480, 481, 482, 488, 490, 492, and 493, relative to substantial relationship and rehabilitation criteria, the Board is proposing the following changes:

#### **Add Section 316.5 to Article 2 of Division 4 of Title 16 of the CCR (Substantial Relationship Criteria):**

The proposed regulation, for purposes of denial, suspension, or revocation of a license, will add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination

for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal will also add that substantially related crimes, professional misconduct or acts will include violating the laws of other state[s] or federal laws governing the practice of chiropractic.

#### **Amend Section 326 to Article 2 of Division 4 of Title 16 of the CCR (Criteria for Rehabilitation)**

The proposed regulation will clarify that the Board, when considering a license denial on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal will require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why.

The proposal will also require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

#### **Add Section 327 to Article 2 of Division 4 of Title 16 of the CCR (Rehabilitation Criteria for Suspensions or Revocations)**

The proposed regulation would clarify that the Board, when considering the discipline of a license on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, and if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal will require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified and why.

The proposal will require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the suspension or revocation was based on something other than a conviction.

**POLICY STATEMENT OVERVIEW/  
ANTICIPATED BENEFITS OF PROPOSAL**

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California’s residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board’s use of their criminal history. Further, by reducing barriers to licensure, the Board anticipates benefits to consumers who may have greater access to licensed health care professionals.

**Consistency and Compatibility with Existing State Regulations**

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations of these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

**FISCAL IMPACT ESTIMATES**

**Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:**

Because the Board historically denies less than one initial application per year, no increase in the number of initial applications approved per year is anticipated. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to any expansion of the licensee population.

**Cost or Savings in Federal Funding to the State:** None.

**Nondiscretionary Costs/Savings to Local Agencies:** None.

**Local Mandate:** None.

**Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement:** None.

**Business Impact:**

The Board has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts: By reducing barriers to licensure for applicants and licensees with criminal histories or license discipline, businesses may find a greater applicant pool from which to hire.

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

**Business Reporting Requirements**

The regulatory action does not require businesses to file a report with the Board.

**Cost Impact on Representative Private Person or Business:**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Effect on Housing Costs:** None.

**EFFECT ON SMALL BUSINESS**

Although the total number of small businesses impacted is unknown, the Board has determined that this regulatory proposal will not have a significant adverse economic impact on small businesses. By reducing barriers to licensure for applicants and licensees with criminal history or license discipline, small businesses may find a greater applicant pool from which to hire.

**RESULTS OF ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS**

**Impact on Jobs/Businesses:**

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

**Benefits of Regulation:**

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed health care professionals, which may benefit the health and welfare of California’s health care consumers. Chiropractic businesses may also benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state’s environment.

**CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative that it considered to the regulation or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the present action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The following alternatives were considered:

- *Option 1:* To pursue a regulatory change that requires the Board to find rehabilitation if the applicants completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole, since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator as to whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.
- *Option 2:* Do nothing; meaning the Board would not adopt the regulations. The Board opted not to pursue this option because the Board is interested in reducing the barriers to licensure for those who have criminal convictions but have shown themselves to be rehabilitated.

**INITIAL STATEMENT OF REASONS AND INFORMATION**

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all the information, upon which the proposal is based, may be obtained upon written request from:

Kristin Walker, Assistant Executive Officer  
901 P Street, Suite 142A  
Sacramento, California 95814  
(916) 263-5365  
[chiro.rulemaking@dca.ca.gov](mailto:chiro.rulemaking@dca.ca.gov)

**AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website, [https://www.chiro.ca.gov/laws\\_regs/prop\\_regs.shtml](https://www.chiro.ca.gov/laws_regs/prop_regs.shtml).

**CONTACT PERSON**

Inquiries concerning the proposed administrative action may be directed to:

Name:  
Kristin Walker, Assistant Executive Officer  
Address:  
901 P Street, Suite 142A  
Sacramento, California 95814  
Telephone:  
(916) 263-5365  
Fax: (916) 327-0047  
E-mail: [chiro.rulemaking@dca.ca.gov](mailto:chiro.rulemaking@dca.ca.gov)

The backup contact person is:

Name:  
Dixie VanAllen, Licensing Manager  
Address:  
901 P Street, Suite 142A  
Sacramento, CA 95814  
Telephone: (916) 263-5329  
Fax: (916) 327-0047  
E-mail: [chiro.rulemaking@dca.ca.gov](mailto:chiro.rulemaking@dca.ca.gov)

Website Address: Materials regarding this proposal can be found at [www.chiro.ca.gov](http://www.chiro.ca.gov).

**TITLE 17. AIR RESOURCES BOARD**

**Notice of Public Hearing to Consider Proposed Amendments to the Antiperspirants and Deodorants Regulation; Consumer Products Regulation; Aerosol Coating Products Regulation; Alternative Control Plan Regulation; the Tables of Maximum Incremental Reactivity Values; and Test Method 310**

The California Air Resources Board (CARB or Board) will conduct a public hearing at the date and time noted below to consider approving for adoption

the proposed amendments to the Antiperspirants and Deodorants Regulation; Consumer Products Regulation; Aerosol Coating Products Regulation; Alternative Control Plan Regulation; the Tables of Maximum Incremental Reactivity Values; and Test Method 310.

DATE: March 25, 2021  
TIME: 9:00 a.m.

Please see the public agenda which will be posted ten days before the March 25, 2021, Board Meeting for any appropriate direction regarding a possible remote-only Board Meeting. If the meeting is to be held in person, it will be held at the California Air Resources Board, Byron Sher Auditorium, 1001 I Street, Sacramento, California 95814.

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., March 25, 2021, and may continue at 8:30 a.m., on March 26, 2021. Please consult the agenda for the hearing, which will be available at least ten days before March 25, 2021, to determine the day on which this item will be considered.

WRITTEN COMMENT PERIOD AND  
SUBMITTAL OF COMMENTS

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing during the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on February 5, 2021. Written comments not submitted during the hearing must be submitted on or after February 5, 2021, and received **no later than March 22, 2021**. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. CARB requests that when possible, written and email statements be filed at least ten days before the hearing, to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail:  
Clerks' Office, California Air Resources Board  
1001 I Street, Sacramento, California 95814

Electronic submittal:  
<https://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code sections 38500, 38501, 38510, 38551, 38560, 38566, 38580, 39000, 39002, 39003, 39515, 39516, 39600, 39601, 39602, 39607, 39650, 39656, 39659, 39701, 41503.5, 41504, 41511, 41700, and 41712. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 38510, 38560, 38566, 38580, 39002, 39600, 39515, 39516, 39601, 39607, 39659, 39701, 40000, 41511, 41700, and 41712.

INFORMATIVE DIGEST OF  
PROPOSED ACTION AND POLICY  
STATEMENT OVERVIEW

(Gov. Code, § 11346.5, subdivision (a)(3))

**Sections Affected:** Proposed amendments to California Code of Regulations, title 17, sections 94501, 94502, 94506, 94508, 94509, 94510, 94511, 94513, 94515, 94521, 94522, 94524, 94526, 94540, 94541, 94542, 94543, 94544, 94545, 94546, 94547, 94548, 94549, 94550, 94551, 94552, 94553, 94554, 94555, 94700; proposed amendments to sections 1, 2, 3, 4, 5, 6, 8 and Appendix A of Method 310, which is incorporated by reference in California Code of Regulations, title 17, sections 94506, 94515 and 94526.

**Documents Incorporated by Reference (Cal. Code Regs., title 1, § 20, subdivision (c)(3)):**

1. North American Industry Classification System United States, 2017, Executive Office of the President, Office of Management and Budget (2017). Incorporated in section 94508 (a)(40)(C) (3);
2. IPCC's Fifth Assessment Report. Myhre, G., D. Shindell, F.-M. Bréon, W. Collins, J. Fuglestedt, J. Huang, D. Koch, J.-F. Lamarque, D. Lee, B. Mendoza, T. Nakajima, A. Robock, G. Stephens, T. Takemura and H. Zhang, 2013: Anthropogenic and Natural Radiative Forcing. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D.

- Qin, G.–K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.) Incorporated in section 94511 (c)(2)(B);
3. Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products [Insert date of Amendment]. Incorporated by reference in sections 94506(a)(1), 94515 (a)(1); and 94526(a)(1);
  4. The following documents are incorporated by reference in the proposed amendments to Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products [Insert date of amendment];
    - ASTM D5443–14 “Standard Test Method for Paraffin, Naphthene, and Aromatic Hydrocarbon Type Analysis in Petroleum Distillates Through 200°C by Multi–Dimensional Gas Chromatography (June 15, 2014).” Incorporated by reference in section 2.1.22;
    - ASTM D5580–15 “Standard Test Method for Determination of Benzene, Toluene, Ethylbenzene, p/m–Xylene, o–Xylene, C9 and Heavier Aromatics, and Total Aromatics in Finished Gasoline by Gas Chromatography (December 1, 2015).” Incorporated by reference in section 2.1.23;
    - NIOSH Methods 1300 “Ketones I, NIOSH Manual of Analytical Methods, Fourth Edition (August 15, 1994).” Incorporated by reference in section 2.1.28;
    - NIOSH: Methods 1401 “Alcohols II, NIOSH Manual of Analytical Methods, Fourth Edition (August 15, 1994).” Incorporated by reference in section 2.1.30;
    - NIOSH: Methods 1402 “Alcohols III, NIOSH Manual of Analytical Methods, Fourth Edition (August 15, 1994).” Incorporated by reference in section 2.1.31;
    - NIOSH: Methods 1403 “Alcohols IV, NIOSH Manual of Analytical Methods, Fourth Edition (March 15, 2003).” Incorporated by reference in section 2.1.32;
  5. The following documents are incorporated by reference in the proposed amendments to the Aerosol Coating Products Regulation:
    - ASTM D5381 — 93(2014) “Standard Guide for X–Ray Fluorescence (XRF) Spectroscopy of Pigments and Extenders (July 1, 2014).” Incorporated in section 94526 (a)(2);

ASTM D523 — 08 “Standard Test Method for Specular Gloss (June 1, 2008).” Incorporated in section 94526 (a)(3); and

ASTM D1613 — 06 “Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products (April 1, 2006).” Incorporated in section 94526 (a)(4);

Method 310 is being amended by this regulation and thus the amendment date would be the date that the regulation is approved by CARB.

## BACKGROUND AND EFFECT OF THE PROPOSED REGULATORY ACTION

### Background on the Proposed Rulemaking

Section 41712 of the California Health and Safety Code requires CARB to adopt regulations to achieve the maximum feasible reduction in Volatile Organic Compound (VOC) emissions from consumer products (including aerosol coatings). To adopt such regulations, CARB must determine that adequate data exists to establish that the regulations are necessary to attain State and federal ambient air quality standards, that the regulations are technologically and commercially feasible, and that they are necessary to carry out the Board’s responsibilities under Division 26 of the Health and Safety Code. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be adopted which requires the elimination of a product form. Health and Safety Code section 41712(d) also requires CARB to consider the effect of proposed regulations for health benefit products on product efficacy in killing or inactivating agents of infectious diseases, and the impact of the proposed regulations on the availability of health benefit products to California consumers. Health and Safety Code section 41712(e) further stipulates that CARB considers any recommendations from federal, State, or local public health agencies and public health experts prior to adopting regulations for health benefit products. Section 41712 is primarily directed at attaining State and federal air quality standards. CARB is also authorized to address toxic air contaminants (TAC) and greenhouse gas (GHG) emissions from consumer products (HSC sections 38500 et seq. and HSC sections 39650 et seq., respectively), as needed to meet California’s air quality mandates, including the protection of public health.

Pursuant to Health and Safety Code sections 39600, 39601, and 41712 primarily, CARB has adopted the Regulation for Reducing Volatile Organic Compound Emissions from Antiperspirants and Deodorants (the “Antiperspirants and Deodorants Regulation,” California Code of Regulations (CCR), title 17, sections 94500–94506.5); the Regulation for Reducing

Emissions from Consumer Products (the “Consumer Products Regulation,” CCR, title 17, sections 94507–94517); the Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions (the “Aerosol Coating Products Regulation,” CCR, title 17, sections 94520–94528); the Tables of Maximum Incremental Reactivity (MIR) Values (“Tables of MIR Values,” CCR, title 17, sections 94700–94701); and Method 310, “Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products” (“Method 310”) (incorporated by reference in sections CCR title 17, sections 94506, 94515 and 94526).

CARB started regulating consumer products in 1989 with adoption of the Antiperspirants and Deodorants Regulation. At that time, the Board established standards based on the vapor pressure of VOCs. The Antiperspirants and Deodorants Regulation has been amended several times, and the most recent amendments became effective on January 1, 2015. Antiperspirants and Deodorants are regulated using mass-based standards.

CARB approved the general Consumer Products Regulation for adoption in 1990, and it has been amended numerous times since then; the most recent amendments became effective on January 1, 2019. To date, VOC standards are in place for 145 product categories under this regulation. Consumer products in this regulation are primarily regulated using mass-based VOC standards. However, in 2019, an alternate compliance option for Multi-purpose Lubricant products that allows compliance to be determined based on a reactivity limit became effective.

CARB adopted the Aerosol Coating Products Regulation in 1995, and has amended it several times since. In 1995, CARB adopted mass-based VOC limits for six “General Coating” categories and 29 “Specialty Coating” categories. Amendments in 1998 addressed the commercial and technological feasibility of some of the VOC limits. In 2000, the regulation was amended to establish Reactivity Limits based on the MIR scale. The Reactivity Limits for the general categories became effective June 1, 2002, and the limits for the specialty categories became effective January 1, 2003. Minor amendments in 2004 and 2006 clarified exemptions and test methods, respectively. The Aerosol Coating Products Regulation was last amended in 2013. These amendments set new or lower reactivity limits for 16 aerosol coating categories.

CARB adopted the Alternative Control Plan Regulation in 1994. This regulation provides a voluntary alternative method to comply with the VOC limits in the Consumer Products Regulation by allowing manufacturers to set up alternative control plans to average the VOC emissions of regulated

consumer products. Amendments to the regulation became legally effective on January 8, 1996.

Tables of MIR Values were first proposed for adoption in 2000, along with amendments to the Aerosol Coating Products Regulation. The tables are used to determine the reactivity content of aerosol coatings, and for the alternate compliance option for Multi-purpose Lubricant products. Amendments to these tables were adopted in 2004 and 2010 to reflect updated science.

Method 310 was adopted in 1997, and has been amended numerous times, most recently on May 25, 2018. Method 310 is used to determine compliance with various regulatory requirements under the Consumer Products program, and is incorporated by reference in CCR, title 17, sections 94506 (Antiperspirants and Deodorants), 94515 (Consumer Products), and 94526 (Aerosol Coating Products).

## EFFECT OF THE PROPOSED RULEMAKING

The proposed amendments would require various consumer products to meet reduced VOC standards. In many cases, this would require manufacturers to reformulate the consumer products. The proposed amendments would achieve Statewide VOC reductions of 3.00 tons per day (tpd) in 2023 and 9.80 tpd in 2031. In the South Coast, VOC reductions from the proposed measures would total 1.25 tpd in 2023 and 4.03 tpd in 2031. Reducing VOC emissions is an important strategy for reducing ground level ozone concentrations, which improves public health and helps to achieve State and federal ambient air quality standards. The proposals would also streamline and clarify various regulatory provisions, improve program effectiveness, and add analytical test procedures.

## PUBLIC PROCESS

The proposed amendments are the culmination of a public process conducted by CARB over the last seven years to identify the most technically sound strategies to effectively help California meet its air quality challenges. This extensive regulatory development process included the following CARB actions:

1. *Spring 2014–Spring 2019*: Development and implementation of a survey that solicited relevant product information for the years 2013, 2014, and 2015; evaluation of the survey responses; and publication of comprehensive survey data summarizing the emissions, reactivity, and ozone-forming potential of over 400 categories of consumer products, with extensive opportunity for public review of draft summary data and opportunities for feedback from product manufacturers and other interested stakeholders.

2. *Spring–Fall 2019*: CARB held fourteen public work group meetings and workshops to evaluate the 47 consumer product categories CARB identified from the survey work described above, as being responsible for the greatest VOC emissions and ozone-forming potential. CARB also met with individual stakeholders and stakeholder groups to collect more information on products and provide additional opportunities for stakeholder input.
3. *Summer 2019–Winter 2020*: CARB held thirteen additional public work group meetings and workshops to identify and refine proposed VOC reduction strategies for specific consumer product categories, and to develop other proposed regulatory updates to improve program effectiveness and clarity.

This regulatory development process is described in more detail in Chapter XII of the Initial Statement of Reasons (ISOR).

#### OBJECTIVES AND BENEFITS OF THE PROPOSED REGULATORY ACTION

##### VOC Reduction Measures

The primary purpose of the Proposed Amendments is to achieve additional VOC reductions that offset emission growth in the sector and help attain State and federal ozone standards, particularly in the South Coast. These include the following:

- *Manual Aerosol Air Freshener*: To achieve reductions from manually-operated aerosol air fresheners, staff proposes to transition the regulated categories of “Single-Phase Aerosol Air Freshener” and “Double-Phase Aerosol Air Freshener” to “Manual Aerosol Air Freshener” and “Automatic Aerosol Air Freshener.” “Automatic Aerosol Air Freshener,” for which lower VOC standards were determined to be infeasible, would retain the existing 30 percent by weight VOC standard; the larger “Manual Aerosol Air Freshener” category would be subject to 10 percent and 5 percent by weight VOC standards on January 1, 2023, and January 1, 2027, respectively.
- *Hair Care Products*: Staff proposes to adopt or reduce VOC standards for the following hair care categories, as follows:
  - *“Hair Finishing Spray”*: Reduce the applicable VOC content standard from 55 percent to 50 percent by weight on January 1, 2023.
  - *“Dry Shampoo”*: Adopt 55 percent and 50 percent VOC content standards applicable

on January 1, 2023, and January 1, 2029, respectively.

- *“Hair Shine” and “Temporary Hair Color”*: Reduce the applicable VOC content standards for both categories from 55 percent to 50 percent by January 1, 2029.
- *Personal Fragrance Product (PFP)*: The Proposed Amendments would reduce the applicable VOC standard for aerosol PFP and PFP with less than or equal to 7 percent fragrance from 75 to 70 percent by weight on January 1, 2023. The applicable fragrance threshold would increase to 10 percent, with a VOC standard of 50 percent by 2031. In addition, the VOC standard for the less than one percent of PFP products with a VOC content above 20 percent would increase from 65 to 75 percent to streamline and simplify program implementation by maintaining a single fragrance threshold for the overall PFP category.<sup>1</sup>
- *Crawling Bug Insecticide (Aerosol)*: Staff proposes to lower the applicable VOC standard from 15 percent to 8 percent by weight as of January 1, 2030. Due to technical feasibility challenges, a separate “Bed Bug Insecticide” category would be defined and would retain a 15 percent by weight VOC standard for the aerosol product form.
- *Sunset of the Two Percent Fragrance Exemption*: Staff proposes to sunset the Two Percent Fragrance Exemption. This proposal would achieve needed VOC reductions, promote transparency and equity, facilitate program enforcement, and help to address growing public health concerns regarding exposure to fragrance ingredients. Staff’s proposal would retain the exemption for a portion of the fragrance and monoterpene content of Air Freshener, Disinfectant, Sanitizer, non-aerosol General Purpose Cleaner, and non-aerosol General Purpose Degreaser products due to potential technical feasibility challenges of complying without any exemption in these product categories.

Staff also proposes to prohibit the future use of perchloroethylene, trichloroethylene, methylene chloride, and p-chloro- $\alpha,\alpha$ -trifluorotoluene (PCBTF) in “Manual Aerosol Air Freshener,” “Finishing Spray,” “Dry Shampoo,” “Hair Shine,” “Personal Fragrance Products,” and “Crawling Bug

<sup>1</sup> The applicable product fragrance content threshold would remain the current 20 percent for products manufactured before January 1, 2023, with staff proposing to lower the fragrance threshold to 7 percent for products manufactured between January 1, 2023, and December 31, 2030, and raise the threshold to ten percent fragrance for products manufactured beginning on January 1, 2031.



Insecticide (Aerosol) products.” This proposal is to ensure that compliance with proposed VOC standards is achieved in a manner that protects public health.

**Proposed Amendments to Improve Program Effectiveness**

This section describes the proposed amendments to improve program transparency, enforceability, and effectiveness, and to reflect lessons learned since the last significant regulatory amendments in 2013.

**Definition of Energized Electrical Cleaner**

“Energized Electrical Cleaner” (EEC) products are almost entirely comprised of perchloroethylene, a TAC, and trichloroethylene, a VOC and a TAC. EEC products are needed solely to safely clean or degrease electrical equipment where a residual current exists at the time cleaning or degreasing occurs. Significant quantities of “Energized Electrical Equipment” continue to be sold to automotive maintenance and repair facilities, despite CARB adopting a previous regulation to prevent the use of “Energized Electrical Cleaner” in motor vehicle maintenance and repair operations, for which it is not needed. When motor vehicle maintenance and repair establishments use EEC products, the public is unnecessarily exposed to TACs, endangering their health. Staff is therefore proposing to update the definition of “Energized Electrical Cleaner” to exclude products sold to automotive maintenance and repair facilities. EEC products sold to automotive maintenance and repair facilities would likely be considered to be general purpose degreasers (depending on label claims), and subject to a VOC standard and TAC prohibitions. Automotive maintenance and repair facilities could continue to purchase, automotive maintenance products that comply with CARB VOC standards and TAC prohibitions. Staff’s proposal would also require that automotive retail establishments maintain for a minimum of five years, and make available to CARB upon request, records they already create regarding “Energized Electrical Cleaner” sales.

**Alternative Control Plan and Innovative Product Exemption Eligibility Criteria**

The proposed amendments would update Alternative Control Plan (ACP) eligibility criteria to prohibit emission reduction credits from being generated by products less than a minimum threshold below the applicable VOC standard, and would update Innovative Product Exemption (IPE) eligibility criteria to exclude products that demonstrate a reduction in VOC based upon product combustion. Both proposals are intended to ensure ACP and IPE provisions continue to generate real air quality and public health benefits, and encourage product innovation, while providing regulatory compliance flexibility where appropriate to still achieving air quality goals.

**IPE Eligibility Criteria for Products Utilizing Compressed Gas Propellants**

The air quality, climate change, and potential health or environmental benefits of compressed gas propellants relative to HFC–152a or other liquefied petroleum gas propellants make it an excellent choice, from an air quality and public health perspective, for use in formulating aerosol consumer products. However, the existing methods for determining product compliance with the applicable VOC standards (based upon ingredient weight) may make manufacturers less likely to utilize compressed gas propellants, due to their low density relative to other VOC exempt propellants, such as HFC–152a, that have a higher global warming potential. The proposed amendments would remedy this disincentive by providing additional IPE eligibility criteria to encourage product manufacturers to develop and market innovative aerosol products that utilize compressed air, carbon dioxide, or nitrogen propellants.

**Tables of Maximum Incremental Reactivity (MIR) Values**

Staff is proposing to add the following additional reactive organic compounds (ROC) to the Tables of Maximum Incremental Reactivity (MIR) Values, MIR Values for Compounds (CCR, title 17, section 94700), so that the ROC can be used in aerosol coating products, as specified in CCR, title 17, section 94522, and in “Multi–purpose Lubricant” products that qualify for an alternate compliance option, as specified in CCR, title 17, section 94509:

- 1–Chloro–3,3,3–Trifluoropropene (HFO–1233zd);
- Alkane Mixed — Minimally 90% C13 and higher carbon number; and
- Diethyl Carbonate.

The addition of MIR values for these three ROCs would provide manufacturers additional flexibility to use these low–reactive substances in products, and could encourage the development of less reactive aerosol coatings and multi–purpose lubricants.

**Plastic Pipe Adhesive**

CARB staff is proposing to create a new special purpose aerosol adhesive category and VOC standard for plastic pipe labeled exclusively to bond segments of acrylonitrile butadiene styrene (ABS), polyvinyl chloride (PVC), or chlorinated polyvinyl chloride (CPVC) together. The feasibility of the “Mist Spray Adhesive” VOC standard of 30 percent by weight that became effective in 2017 was not considered for these products. The current proposal would set a more feasible standard of 60 percent by weight VOC and exclude them from the “Mist Spray Adhesive” category.

**Exclusion of Denatured Alcohol Products Used to Maintain Electrical Equipment Owned by Public Utilities from the “Multi-purpose Solvent” Definition**

CARB staff is proposing to create a narrow exclusion to the definition of “Multi-purpose Solvent” for products used to maintain electrical equipment owned by public utilities. This narrow exemption is necessary for denatured alcohol products that are specified by utility equipment manufacturers as the sole method of maintaining specialized electrical equipment.

**Test Method 310 Updates**

CARB staff is proposing amendments to Method 310 to make updates for clarity and consistency, to remove and add several reference test methods, and to revise equations to better reflect how CARB staff calculates VOC and ROC.

**COMPARABLE FEDERAL REGULATIONS**

The United States Environmental Protection Agency (U.S. EPA) has promulgated a federal consumer products rule under section 183(e) of the federal Clean Air Act (CAA) (40 CFR Part 59, subpart C, sections 59.201 et seq.). The rule specifies VOC limits for a number of consumer product categories, and is similar in format to CARB’s Consumer Products Regulation.

Although the federal regulation is similar in many aspects to the California regulation, it does not include a number of product categories that are currently regulated under the CARB regulation. For the categories that are regulated under both rules, many of CARB’s limits are more stringent than the U.S. EPA’s limits.

U.S. EPA’s rule also differs in that it applies nationwide to consumer product manufacturers, importers, and distributors, but not retailers, while the CARB regulation applies to any person, including retailers, who “sells, supplies, offers for sale, or manufactures consumer products for use in the State of California.” Finally, U.S. EPA’s rule has an unlimited “sell-through” period for noncomplying products manufactured before the effective date of the limits, whereas California law (Health and Safety Code section 41712) limits the sell-through period to three years.

U.S. EPA’s consumer products rule also does not prohibit the use of certain toxic air contaminants, and there is no comparable federal regulation related to reducing greenhouse gas emissions from consumer products.

On March 24, 2008, U.S. EPA set national VOC emission standards for aerosol spray paints (aerosol coatings) (40 CFR Part 59, subpart E, National Volatile Organic Compound Emission Standards for Aerosol Coatings). This national regulation, modeled after

CARB’s Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions, established reactivity-based emission standards for aerosol spray paints. On December 24, 2008, U.S. EPA published amendments to the rule to move the applicability and initial compliance dates for aerosol coatings from January 1, 2009, to July 1, 2009. The reactivity limits and product categories in the national rule mirror CARB’s aerosol coatings regulation prior to CARB’s aerosol coating regulation amendments adopted in 2013. CARB’s regulation also differs in that it applies to the commercial application of aerosol coatings and has no exemption for any of the manufacturers. The national rule also does not prohibit the use of certain TACs.

Thus, CARB’s Consumer Products program is more stringent overall than the federal program. Because California has unique air quality problems, reducing VOC and GHG emissions from all categories, including consumer products, to the maximum extent feasible is necessary to attain the federal and State ambient air quality standards, including for ozone.

**AN EVALUATION OF INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

(Gov. Code, § 11346.5, subdivision (a)(3)(D))

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing State regulations.

**MANDATED BY FEDERAL LAW OR REGULATIONS**

(Gov. Code, §§ 11346.2, subdivision (c), 11346.9)

The proposed regulatory action is not mandated by federal law or regulations.

**DISCLOSURES REGARDING THE PROPOSED REGULATIONS**

**FISCAL IMPACT/LOCAL MANDATE DETERMINATION REGARDING THE PROPOSED ACTION**

(Gov. Code, § 11346.5, subdivisions (a)(5)&(6))

The determinations of the Board’s Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

HOUSING COSTS

(Gov. Code, § 11346.5, subdivision (a)(12))

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

SIGNIFICANT STATEWIDE  
ADVERSE ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESS, INCLUDING  
ABILITY TO COMPETE

(Gov. Code, §§ 11346.3, subdivision (a), 11346.5, subdivision (a)(7), 11346.5, subdivision (a)(8))

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS/ASSESSMENT

(Gov. Code, § 11346.5, subdivision (a)(10))

**Non-Major Regulation: Statement of the Results of the Economic Impact Assessment (EIA):**

The Executive Officer has made an initial determination that the proposed regulatory action is not a major regulation under the range of cost estimates considered. In Health and Safety Code section 57005(b), the California Environmental Protection Agency (CalEPA) defines a “major regulation” as any regulation that will have an economic impact on the State’s business enterprises in an amount exceeding \$10 million per year, as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by Government Code section 11346.3(a). This proposal is not considered a major regulation under CalEPA’s

definition because staff does not expect the cost of compliance to exceed \$10 million in any year.

Separately, in California Code of Regulations, title 1, section 2000(g), the Department of Finance (DOF) defines a major regulation as a regulation subject to Office of Administrative Law review that has an estimated economic impact on business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the regulation is estimated to be filed with the Secretary of State through 12 months after the regulation is estimated to be fully implemented, as estimated by the agency. This proposal is not considered a major regulation under DOF’s definition because staff does not estimate an economic impact exceeding \$50 million in any 12-month period.

EFFECT ON JOBS/BUSINESSES

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

BENEFITS OF THE  
PROPOSED REGULATIONS

The objective of the proposed regulatory action is to help meet federal air quality standards and protect the health of California residents. The consumer products program has been and remains a critical part of California’s overall efforts to reduce ozone formed in the lower atmosphere from emissions associated with the use of chemically formulated consumer products. Ground-level ozone remains one of California’s greatest air quality challenges. The majority of California residents continue to be exposed to pollutant concentrations that exceed federal health-based ambient air quality standards for ozone.

A summary of these benefits is provided; please refer to “Objectives and Benefits,” under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code section 11346.5, subdivision (a)(3) discussion above.

**BUSINESS REPORT**

(Gov. Code, §§ 11346.5, subdivision (a)(11);  
11346.3, subdivision (d))

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

**COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES**

(Gov. Code, § 11346.5, subdivision (a)(9))

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. As explained in the ISOR, the proposed amendments are likely to have a cost impact on some individual businesses. Staff has estimated that the total direct cost for consumer product manufacturers to comply with the proposed amendments is about \$17.9 million dollars per year for 15 years, or a total of about \$267.7 million. Annualized non-recurring direct costs for consumer products manufacturers is estimated to be about \$34.2 million. There is an estimated annual recurring cost savings of about \$3.4 million. If all assumed compliance costs are passed on to the consumer, without consideration of typical retail mark-up, we estimate the average annual cost to a consumer to be about \$0.01 per unit.

**EFFECT ON SMALL BUSINESS**

(Cal. Code Regs., title 1, § 4,  
subdivisions (a) and (b))

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. Staff has confirmed that there are 13 small businesses in California that may be affected by the proposed amendments. Of the 13 businesses, one manufactures Personal Fragrance Products, eight manufacture Hair Finishing Spray, two manufacture Dry Shampoo, and two manufacture both Hair Finishing Spray and Dry Shampoo. The average revenue for small businesses that manufacture Personal Fragrance Products, Hair Finishing Spray, and Dry Shampoo is \$5,324,950, \$3,681,744, and \$4,579,789, respectively.

**CONSIDERATION OF ALTERNATIVES**

(Gov. Code, § 11346.5, subdivision (a)(13))

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The proposed VOC standards do not mandate the use of specific technologies or equipment, or prescribe specific actions or procedures, as they, as a whole, set emission reduction standards which may be met in multiple ways. However, out of an abundance of caution, CARB staff have evaluated some provisions of the Proposed Amendments that may be viewed as prescriptive if read in isolation — prohibition on the use of TACs in certain categories, and exclusion of products sold to automotive maintenance and repair facilities from being considered “Energized Electrical Cleaner.” CARB considered performance standard alternatives to these potentially prescriptive provisions, out of an abundance of caution, and found that performance standard alternatives would not meet the objectives of the regulation. More information is given in the ISOR.

**STATE IMPLEMENTATION PLAN REVISION**

If adopted by CARB, CARB plans to submit the proposed regulatory action to the U.S. EPA for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intended to reduce emissions of air pollutants in order to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA pursuant to the CAA.

**ENVIRONMENTAL ANALYSIS**

When the Revised Proposed 2016 State Strategy for the SIP was developed, CARB prepared an environmental analysis (EA) under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). Because the Proposed Amendments implement one of the measures in CARB’s adopted

Revised Proposed 2016 State Strategy for the SIP, “Consumer Products,” the environmental impact of the Proposed Amendments were already examined as part of the EA for that Plan. The report is entitled: Final Environmental Analysis for the Revised Proposed 2016 State Strategy for the State Implementation Plan, or “Final EA.” The Final EA concluded that implementation of the SIP Strategy measures could result in short-term and long-term beneficial impacts to air quality, energy demand, and greenhouse gases. It further concluded that the proposed measures would result in less-than-significant impacts to: energy demand, hazards and hazardous materials, land use and planning, mineral resources, population and housing, public services, and recreational services. The Final EA also concluded that there could be potentially significant and unavoidable adverse impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, transportation/traffic, and utilities and service systems.

Staff has determined that a new Environmental Impact Analysis is not required for the current Proposed Amendments because the Proposed Amendments do not present any effects that were not examined in the prior Final EA, and because there are no changes proposed to the originally-approved project that involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects than previously identified in the prior Final EA for the 2016 SIP Strategy. The basis for reaching this conclusion is provided in Chapter VII of the ISOR report.

#### SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks’ Office at [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) or (916) 322-5594 as soon as possible, but no later than ten business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;

- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) o (916) 322-5594 lo más pronto posible, pero no menos de diez días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

#### AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Joseph Calavita, Manager, Implementation Section, at [joe.calavita@arb.ca.gov](mailto:joe.calavita@arb.ca.gov) or Josh Berghouse, Air Pollution Specialist, Implementation Section, at [josh.berghouse@arb.ca.gov](mailto:josh.berghouse@arb.ca.gov).

#### AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Public Hearing to Consider the Proposed Amendments to the Antiperspirants and Deodorants Regulation; Consumer Products Regulation; Aerosol Coating Product Regulation; Alternative Control Plan Regulation; the Tables of Maximum Incremental Reactivity Values; and Test Method 310.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB’s website listed below, or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on January 5, 2021. Because of current travel, facility, and staffing restrictions, the California Air Resources Board’s offices may have limited public access. Please contact Chris Hopkins, Regulations Coordinator, at [chris.hopkins@arb.ca.gov](mailto:chris.hopkins@arb.ca.gov) or (916) 445-9564 if you need physical copies of the documents.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed is Chris Hopkins, Regulations Coordinator, at (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all the information

upon which the proposal is based. This material is available for inspection upon request to the contact persons.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

#### FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on CARB's website listed below.

#### INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2021/consumerproducts2021>.

### **TITLE 19. OFFICE OF EMERGENCY SERVICES**

#### **California Accidental Release Prevention (CalARP) Regulations (Chapter 4.5)**

The California Governor's Office of Emergency Services (hereafter "CalOES") proposes to amend sections 2735.3, 2745.7.5, 2762.1, 2762.7, 2762.10, and 2762.13 in Title 19 of the California Code of Regulations

(CCR) after considering all comments, objections, and recommendations regarding the proposed action. If adopted, these proposed amendments would clarify existing provisions of the CalARP regulations.

#### PUBLIC HEARING

CalOES has not scheduled a public hearing on this proposed action. However, CalOES will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Written requests for a hearing should be submitted to the contact person identified in this notice.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CalOES. The written comment period closes on **March 22, 2021**.

Due to possible delays caused by the COVID-19 emergency, CalOES strongly recommends that written comments be submitted electronically, rather than in paper form, to the email listed below.

Written comments can be mailed to:  
California Governor's Office of Emergency Services  
c/o Meg Wilson, Senior Counsel  
3650 Schriever Avenue  
Mather, CA 95655  
Telephone: (916) 621-8176

Comments may also be submitted by e-mail to [regulations@caloes.ca.gov](mailto:regulations@caloes.ca.gov).

#### AUTHORITY

Government Code section 8585(b)(1) and Health and Safety Code section 25534.05.

#### REFERENCE

Health and Safety Code sections 25501, 25531.2, 25532, 25534, 25535 and 25535.1; and Sections 68.3, 68.65, 68.77, 68.83 and 68.175, Part 68, Title 40, Code of Federal Regulations.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, the California Accidental Release Prevention (CalARP) Program regulates owners and operators of stationary sources concerning the prevention of accidental releases of hazardous substances, including registration requirements and

risk management plans. The purpose of the CalARP program is to prevent the accidental releases of substances that can cause serious harm to the public and the environment, to minimize the damage if releases do occur, and to satisfy community right-to-know laws. The CalARP program is implemented at the local government level by Unified Program Agencies (UPAs). The CalARP program is designed so these agencies work directly with the regulated businesses.

The proposed action would amend CalOES's CalARP regulations in order to make them clearer and more consistent with Health and Safety Code sections 25531 through 25543.3.

Specifically, this rulemaking action clarifies CalOES's definitions of "major change" at 19 CCR § 2735.3(hh) and "employee representative" at § 2735.3(t), as CalOES has been informed by regulated facilities in the petroleum industry that these terms are vague and confusing. The changes to the definition of "employee representative" also clarifies that nothing in the regulations is meant to impede on an employee's collective bargaining rights. CalOES is also deleting the term "highly hazardous material" at § 2735.3(y) and replacing it with the term "regulated substance" which is already defined in the regulations under 19 CCR § 2735.3(kkk). References to "highly hazardous material" in sections § 2735.3(ii), § 2735.3(yy), § 2735.3(aaa), § 2745.7.5(c), § 2762.1(a), and § 2762.7(b) will be removed and replaced with "regulated substance". CalOES is also removing the third sentence in § 2762.13(e)(3) as CalOES believes that this sentence is unnecessary and has also received some complaints from regulated facilities in the petroleum industry that it is vague. Lastly, this rulemaking action is adding § 2762.10(e) to clarify that nothing in that section shall be construed to alter any legal rights an employee has pursuant to federal law, including rights pursuant to a collective bargaining agreement or status as a collective bargaining agent.

The purpose of these amendments is to clarify the CalARP regulations so that the UPAs can better enforce them and so the regulated facilities can appropriately comply with them. This action has the specific benefit of clarifying, and creating more consistency within, the existing rules, which would benefit the health and safety of workers and the general public. Amendments to these comprehensive set of rules ensures that CalOES can most efficiently discharge its statutory duties and appropriately prevent and address the accidental releases of hazardous substances.

NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

CalOES has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, CalOES has concluded that these are the only regulations that concern the CalARP program. There are related regulations promulgated by the California Occupational Health and Safety Standards Board within the California Division of Occupational Safety and Health (CalOSHA) known as the California Process Safety Management ("CalPSM") regulations. CalOES has consulted with CalOSHA and understands and believes that CalOSHA intends to amend the CalPSM regulations to be consistent with those amended regulations set forth herein.

DISCLOSURES REGARDING THE PROPOSED ACTION

*CalOES has made the following initial determinations:*

**Mandate on local agencies and school districts:** None.

**Cost or savings to any state agency:** No additional costs or savings beyond those imposed by existing law.

**Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.

**Other non-discretionary cost or savings imposed on local agencies:** No additional costs or savings beyond those imposed by existing law.

**Cost or savings in federal funding to the state:** None.

**Cost impacts on a representative private person or businesses:** No additional costs or savings beyond those imposed by existing law. Therefore, CalOES is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Statewide adverse economic impact directly affecting businesses and individuals:**

CalOES has made an initial determination that the proposed action *will not* have a significant statewide adverse economic impact directly affecting businesses or individuals.

**Significant effect on housing costs:** None.

**Small Business Determination:** CalOES anticipates that the regulations will not create additional costs or savings beyond those imposed by existing regulations. Similarly, CalOES has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

**RESULTS OF ECONOMIC  
IMPACT ASSESSMENT**

CalOES anticipates that the adoption of these amended regulations will not impact the creation or elimination of jobs or businesses within the state or the expansion of businesses currently doing business within the state. Because the proposed amendments will provide more clarity and consistency to regulations addressing the accidental release of hazardous material, they benefit the health and welfare of all California residents and the state's environment.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), CalOES must determine that no reasonable alternative it considered or that has otherwise been identified and brought to CalOES's attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CalOES has thus far not become aware of a better alternative and invites interested persons to present alternatives to the proposed regulations during the written comment period.

**CONTACT PERSON**

Inquiries concerning the proposed administrative action may be directed to:

Meg Wilson, Senior Counsel  
Legal Affairs  
California Governor's Office of Emergency  
Services  
3650 Schriever Avenue  
Mather, CA 95655  
Telephone: (916) 621-8176  
Email: [regulations@caloes.ca.gov](mailto:regulations@caloes.ca.gov)

Backup Contact Person:

Stephanie Ogren, Assistant Chief Counsel  
Legal Affairs  
California Governor's Office of Emergency  
Services  
3650 Schriever Avenue  
Mather, CA 95655  
Telephone: (916) 621-9048  
Email: [regulations@caloes.ca.gov](mailto:regulations@caloes.ca.gov)

Please direct requests for copies of the proposed text (express terms) of the regulations, the initial statement

of reasons, the modified text of the regulations, a copy of the final statement of reasons once it has been prepared, or other information upon which the rulemaking is based, should other sources be used in the future, to Meg Wilson or Stephanie Ogren at the above address.

**ONLINE AVAILABILITY OF STATEMENT  
OF REASONS, TEXT OF PROPOSED  
REGULATIONS, AND RULEMAKING FILE**

This notice, along with the initial statement of reasons, and the full text of the proposed regulations, is available online at: <https://www.caloes.ca.gov/cal-oes-divisions/legal-affairs/rulemaking>.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After considering all timely and relevant comments received, CalOES may adopt the proposed regulations substantially as described in this notice. If CalOES makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before CalOES adopts the regulations as revised. CalOES will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

**PETITION DECISIONS**

**DEPARTMENT OF CORRECTIONS  
AND REHABILITATION**

PETITIONER  
Melvin Williams

**AUTHORITY**

Under authority granted by Government Code (GC) section 12838.5 which vests to the California Department of Corrections and Rehabilitation (CDCR or the Department), all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC



section 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. PC section 5058 provides that the Director may prescribe and amend regulations for the administration of prisons. PC section 5054 vests with the Secretary of the CDCR the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

#### CONTACT PERSON

Please direct any inquiries regarding this action to E. Hoppin, Associate Director (A), Risk Management Branch, California Correctional Health Care Services (CCHCS), P.O. Box 588500, Elk Grove, CA 95758; by telephone at (916) 691-2921; or by email at [HealthCareRegulations@cdcr.ca.gov](mailto:HealthCareRegulations@cdcr.ca.gov).

#### AVAILABILITY OF PETITION

The petition to adopt regulations is available upon request from the Department's contact person.

#### SUMMARY OF PETITION

The petitioner, Melvin Williams, requests that Post Traumatic Slave Syndrome be adopted into California Code of Regulations (CCR), Title 15, Divisions 2 and 3. The petitioner requests this regulatory change as, "a very large percentage of the prison's population suffer from this syndrome, especially African American's [sic] who make up over 75% of CDCR's prison population."

The petitioner cites the following, "Authorities and References Gov. Code sections 11346.5(a)(3)(D) and 12838.5; 1170(d)(e); 1001.9; 1001.36; 5054; 5058; 5058.3; 5076.2(a); 5055 of the Penal Code; section 1107 Evidence Code; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. § 1997 et seq. Public Law 96-247, 94 Stat. 349; Title 28 Code of Regs §35.107; Penal Code § 3550, Gov. Code § 8658; 2016 Cal SB 6; People v. Loper (2015) 60 Cal 4<sup>th</sup> 1155; Penal Code § 1603 et seq."

#### DEPARTMENT DECISION

Any petitions related to the adoption of regulations in Title 15, Division 2, shall be submitted to the Board of Parole Hearings (BPH) as the BPH has authority over Title 15, Division 2. Therefore, the petition is denied insofar as it pertains to the petitioner's request to amend Title 15, Division 2, as these regulations do not fall under the jurisdiction of the CDCR Secretary.

The petitioner's request that Post Traumatic Slave Syndrome be addressed in CCR, Title 15, Division 3, is denied because regulations governing the health care delivery system for CDCR patients are not intended to describe the nuances of clinical treatment for specific health care issues experienced by patients. The Department's rules provide the governance and operational framework for the delivery of care within CDCR institutions; health care providers are responsible for making evidence-based determinations of diagnosis and providing medically necessary care according to accepted clinical standards. Any trauma experienced by CDCR patients that may result from the systemic or cultural pressures of a given community is treated within the established health care delivery system and in accordance with accepted clinical standards and the Diagnostic and Statistical Manual of Mental Health Disorders, Fifth Edition. Therefore, the Department has made the determination that singling out the condition referenced by the petitioner within Title 15, Division 3, is unnecessary and inconsistent with the current regulatory framework.

### DEPARTMENT OF PESTICIDE REGULATION

#### DECISION ON RECONSIDERATION

This is the written decision required by Government Code section 11340.7 on a request for reconsideration of the agency's decision to deny a petition requesting the adoption, amendment or repeal of a regulation. The agency's original decision on the petition for rulemaking is available in the California Regulatory Notice Register, 2020 Register 46-Z (November 13, 2020).

#### AGENCY

The Department of Pesticide Regulation (DPR) received a request for reconsideration under Government Code section 11340.7(c) on December 22, 2020.

#### PARTY SUBMITTING THE REQUEST FOR RECONSIDERATION

Petitioners are Daniel A. Raichel and Samuel D. Eisenberg on behalf of Natural Resources Defense Council, Californians for Pesticide Reform, Center for Biological Diversity, Friends of the Earth, Pesticide Action Network North America, and the Xerces Society for Invertebrate Conservation.

PROVISIONS OF THE CALIFORNIA  
CODE OF REGULATIONS  
REQUESTED TO BE AFFECTED

Petitioners' request for reconsideration requests that DPR: (1) "repeal its current regulatory policy regarding crop seeds treated with neonicotinoids ("neonics") and other systemic insecticides" and (2) "reconsider and reverse its denial of [petitioners'] request that it designate pesticide-treated seeds as 'restricted materials' and provide all other regulation necessary to mitigate their environmentally harmful effects." The first request does not affect any provision of the California Code of Regulations. The second request would affect section 6400 of title 3 of the California Code of Regulations to add neonicotinoid-treated seeds to the state's list of restricted materials, and Article 5 of Subchapter 4 of Chapter 2 of Division 6 of Title 3 of the California Code of Regulations to add restrictions on these products.

REFERENCE TO AUTHORITY TO TAKE THE  
ACTION REQUESTED

Petitioners cite Food and Agricultural Code sections 14001–14015 as DPR's authority to list pesticides as "restricted materials," and sections 12824, 12838, and 14102 as DPR's authority to take regulatory actions "necessary to protect against the harmful effects" of neonicotinoid-treated seeds.

REASONS SUPPORTING THE  
AGENCY DETERMINATION

**Procedural Background**

On September 23, 2020, DPR received a petition for rulemaking under Government Code section 11340.6 requesting that DPR take three actions:

- (1) Require registration and reporting of all seeds treated with neonicotinoids and other systemic pesticides.
- (2) List neonicotinoid-treated seeds as restricted materials.
- (3) Promote non-chemical pest control alternatives.

On October 23, 2020, DPR sent a response and decision to petitioners denying their request for rulemaking. Because petitioners stated in their petition that the first and third actions did not require rulemaking, DPR only responded to the second action. DPR denied the request to list neonicotinoid-treated seeds as restricted materials as premature and without substantial scientific evidence. DPR's decision was published in the California Regulatory Notice Register on November 13, 2020.

In their request for reconsideration, petitioners argue that their original petition did make a request for rulemaking on the first action. Specifically, the request for reconsideration requests that DPR: (1) "repeal its current regulatory policy regarding crop seeds treated with neonicotinoids ("neonics") and other systemic insecticides," which DPR interprets as a request to register and regulate such seeds as "pesticides," and (2) "reconsider and reverse its denial of [petitioners'] request that it designate pesticide-treated seeds as 'restricted materials' and provide all other regulation necessary to mitigate their environmentally harmful effects."

**Summary of Agency's Decision**

DPR denies the request for reconsideration in its entirety: (1) petitioners' request that DPR register neonicotinoid-treated seeds as "pesticides" is not a rulemaking activity subject to Article 5 of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and (2) petitioners' request that DPR further restrict the use of neonicotinoid-treated seeds lacks a sufficient scientific basis at this time.

**Rationale for Agency's Decision**

*(1) Request that DPR Register and Regulate Neonicotinoid-Treated Seeds*

Before a pesticide can be sold or delivered into or within California, the product's label must be registered with DPR. (Food & Agricultural Code, § 12993.) A "pesticide" subject to these requirements includes (a) any spray adjuvant or (b) "any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest. . . ." (Food & Agricultural Code, § 12753.) As previously stated in DPR's October 23, 2020, decision on the original petition, to the extent that the seed is treated with a pesticide to protect the seed itself, the seed is not "intended to be used" for any of the pesticidal purposes described in Food and Agricultural Code section 12753, and does not meet the definition of a "pesticide." However, substances that are intended to be used for controlling pests and are applied to a seed are pesticides and must be registered with DPR before they are sold or used in California.

DPR understands petitioners to be requesting that DPR register neonicotinoid-treated seeds. However, DPR does not specify, by regulation, which products or substances may meet the definition of "pesticide" subject to registration requirements. Rather, DPR determines, on a case-by-case basis, whether any given product or substance is a "pesticide" requiring registration. This involves reviewing the product ingredients, any safety data sheets, the product label, marketing materials for the product, any available laboratory tests of the product contents, and

application of the various definitions and terms found in the Food and Agricultural Code and title 3 of the California Code of Regulations to those materials to identify whether registration is required. DPR has a comprehensive registration program to evaluate pesticides on a product-by-product basis. Where product registration is sought, DPR scientists perform scientific evaluations to ensure that use of the product consistent with label restrictions, regulations, and other control measures will not result in significant adverse effects to human health or the environment.

If DPR were to determine that a treated seed product was a pesticide under Food and Agricultural Code 12753, DPR would not register that product by regulation. Product labeling is not required to be registered by regulation because it only applies to a specific pesticide, is not intended to apply generally, and does not implement, interpret, or make specific any law enforced by DPR. (*Patterson Flying Service v. Dept. of Pesticide Regulation* (2008) 161 Cal. App. 4th 411, 429.) Instead, DPR would determine, on a product-by-product basis, whether registration is required by law. If registration is required, DPR would take an appropriate enforcement action to enforce the registration requirement and issue a registration notice informing pesticide registrants of any registration requirements that may be applicable to their individual product. Neither of these are rulemaking activities.

DPR is reviewing marketing materials and product labels for neonicotinoid-treated seeds offered for sale in California to determine whether those products require registration. To the extent that neonicotinoid-treated seeds are treated to provide protection beyond the seed itself, they would be “pesticides.” In that case, the product would be subject to the DPR pesticide registration process, including DPR’s process for enforcing registration requirements — not the process to adopt, amend, or repeal a regulation under Article 5 of the Government Code. If a product is determined to be an unregistered pesticide, DPR would initiate an enforcement action — not adopt a regulation requiring the registration of the product. As such, no formal rulemaking action is necessary or appropriate to require registration of a neonicotinoid-treated seed if it is a “pesticide.”

Because no rulemaking action is necessary or appropriate to achieve petitioners’ desired outcome, DPR denies the request for reconsideration.

(2) *Request to Regulate Neonicotinoid-Treated Seeds as Restricted Materials and Adopt Other Mitigating Regulations*

Petitioners provide no new information or argument to support their request for reconsideration of DPR’s decision to deny a rulemaking to list neonicotinoid-treated seeds as restricted materials by regulation or to take other regulatory action to restrict the use of these products. As DPR explained in its decision denying the rulemaking, it is premature to consider regulating neonicotinoid-treated seeds as restricted materials or to take other regulatory action restricting their use before DPR has registered the product in the first instance, as registration review of the product may result in all the necessary mitigation through an appropriate pesticide label or by denying registration, thereby prohibiting its sale in California. (See DPR, Decision on Petition for Rulemaking (October 22, 2020), p. 2.)

Petitioners assert in their request for reconsideration that the information provided in their petition constitutes substantial evidence to add restrictions to these products. That assertion does not overcome DPR’s determination, based on the existing evidence and data available, that the information petitioners’ cited is insufficient to form a scientific basis for restricting the use of these products. (See DPR, Decision on Petition for Rulemaking, *supra*, p. 3.) DPR therefore denies the request to take further regulatory action to restrict the use of neonicotinoid-treated seeds that are treated to protect the seed itself.

AGENCY CONTACT PERSON

Jeannie Alloway, Legal Assistant  
 Department of Pesticide Regulation  
 1001 I Street, P.O. Box 4015  
 Sacramento, CA 95812-4015  
 (916) 324-2666  
[jeannie.alloway@cdpr.ca.gov](mailto:jeannie.alloway@cdpr.ca.gov)

RIGHT OF INTERESTED PERSONS TO OBTAIN A COPY OF THE PETITION

Any interested persons may obtain a copy of the petition or request for reconsideration by contacting the contact person named above.

DEPARTMENT OF PESTICIDE REGULATION

/s/  
 Val Dolcini, Director

**OAL REGULATORY  
DETERMINATION**

**DEPARTMENT OF STATE HOSPITALS**

**OFFICE OF ADMINISTRATIVE LAW  
DETERMINATION OF ALLEGED  
UNDERGROUND REGULATIONS**

**(Pursuant to Government Code  
Section 11340.5 and Title 1, section 270, of the  
California Code of Regulations)**

**2021 OAL DETERMINATION NUMBER 1  
(OAL MATTER NUMBER  
CTU2020-0706-01)**

**REQUESTED BY:**

**Vadim Stanley Miesegeas**

**CONCERNING:**

**Administrative Directive 610 Titled “Patient  
Property” issued by the Department of State  
Hospitals — Atascadero**

**DETERMINATION ISSUED PURSUANT  
TO GOVERNMENT CODE SECTION  
11340.5.**

**SCOPE OF REVIEW**

A determination by the Office of Administrative Law (“OAL”) evaluates whether an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (the “APA”). If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should

have been, it is an “underground regulation” as defined in California Code of Regulations (the “CCR”), title 1, section 250.<sup>1</sup>

**CHALLENGED RULE**

The challenged rule is contained in Administrative Directive No. 610, titled “Patient Property,” which was issued by Jason Black and the Department of State Hospitals (the “Department”) — Atascadero (“DSA-A”) on April 22, 2020. Specifically, the challenged rule states the following:

Patients may not give, trade, barter, or sell any personal articles to another patient unless there is a prior recommendation by the treatment team, approved by a Program Director. After approvals are obtained, Patient Property slips (Form AT 2762) will be prepared for both patients, signed by the patients and Unit Supervisor, and forwarded to the Patient Property Department.

Administrative Directive No. 610 is attached hereto as Exhibit A.

**DETERMINATION**

OAL determines that the portion of Exhibit A pertaining to property transfer between patients, as stated above, meets the definition of “regulation” that should have been adopted pursuant to the APA, but was not. To this extent, Exhibit A is an underground regulation.

**FACTUAL BACKGROUND**

On July 6, 2020, OAL received the petition from Mr. Miesegeas. OAL accepted the petition for consideration on September 4, 2020.

OAL published a summary of the petition in the California Regulatory Notice Register on September 18, 2020, and solicited comments from the public until October 19, 2020. OAL did not receive any comments. A response to the petition from the Department was due no later than November 2, 2020. No response was received from the Department.

Exhibit A contains restrictions on the use of personal property within the Department facility. The challenged rule therein places certain restrictions on property transfer between patients. Specifically, the

<sup>1</sup> As defined by title 1, section 250(a), an “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

challenged rule, found on page 4 of Exhibit A, states the following:

Patients may not give, trade, barter, or sell any personal articles to another patient unless there is a prior recommendation by the treatment team, approved by a Program Director. After approvals are obtained, Patient Property slips (Form AT 2762) will be prepared for both patients, signed by the patients and Unit Supervisor, and forwarded to the Patient Property Department.

Welfare and Institutions Code section 4005.1 gives authority to the Department regarding the general administration of state hospitals:

The State Department of State Hospitals, the State Department of Health Care Services, and the State Department of Social Services may adopt and enforce rules and regulations necessary to carry out their respective duties under this division [regarding the care and treatment of persons with mental health disorders under the custody of the Department].

Additionally, Welfare and Institutions Code section 4027 permits the Department to adopt regulations governing the general administration of patient's rights:

The State Department of State Hospitals may adopt regulations concerning patients' rights and related procedures applicable to the inpatient treatment of mentally ill offenders receiving treatment pursuant to Sections 1026, 1026.2, 1364, 1370, 1610, and 2684 of the Penal Code, Section 1756 of this code, persons receiving treatment as mentally disordered sex offenders, and inmates of jail psychiatric units.

Implementing this authority, the Department adopted section 892 in title 9 of the CCR, which places certain prohibitions on patient's rights to operate business within a facility:

[Non-Lanterman-Petris-Short Act] patients shall not operate a business from within the facility. If there is any business activity of a patient or disposition of property owned by a patient that needs to be attended to or to be administered, the patient shall designate a person outside the facility to be responsible for doing so. If necessary, the patient shall execute a power of attorney or other legally authorizing instrument that allows the patient's designee the legal authority to take care of the patient's business or property while the patient is in the facility.

While the above constitutes existing law governing patient property, a search of title 9 did not reveal any regulations establishing the restrictions on property transfer between patients as set forth in Exhibit A.

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 it creates an underground regulation as defined in section 250 in title 1 of the CCR.

OAL may issue a determination as to whether an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of "regulation" as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code sec.11340(b)). An OAL determination is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL's authority to issue a determination extends only to the limited question of whether the challenged rule is a "regulation" subject to the APA. This analysis will determine (1) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the [APA] (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a

rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subdivision (g)).<sup>2</sup>

As stated in *Tidewater*, the first element used to identify a "regulation" is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.<sup>3</sup>

By its own terms, Exhibit A applies to all inmates in DSH-A. Under the "POLICY" section on page 1 of Exhibit A, the Department states, "Patients admitted to DSH-A can retain personal property within the limits set forth in this directive." As a result, Exhibit A applies generally to any patient who is, or will become, a patient at DSH-A.

The second element used to identify a "regulation" as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. Welfare and Institutions Code section 4005.1 permits the Department to adopt regulations governing the general administration of state hospitals. Additionally, Welfare and Institutions Code section 4027 permits the Department to adopt regulations governing the general administration of patient's rights. Since the challenged rule concerns patient's rights regarding personal property within a state hospital—specifically, DSH-A—Exhibit A implements, interprets, and makes specific Welfare and Institutions Code sections 4005.1 and 4027. In addition, by placing prohibitions on the disposition of property owned by a patient, Exhibit A further implements, interprets, and makes specific the Department's existing patient property regulations set forth in title 9 of the CCR, including but not limited to section 892. Therefore, the second element in *Tidewater* is met.

The restrictions on property transfer between patients contained in Exhibit A, therefore, meet the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant

to Government Code section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*" (Emphasis added.)

The Department has not identified an express statutory exemption from the APA that would apply to the restriction on property transfer between patients, nor did OAL find such an exemption.

### CONCLUSION

In accordance with the above analysis, OAL determines that the restrictions on property transfer between patients contained in Exhibit A meet the definition of "regulation" that should have been, but were not, adopted pursuant to the APA. Therefore, they are underground regulations.

Date: January 19, 2021

/s/

Steven J. Escobar  
Senior Attorney

For: Kenneth J. Pogue  
Director

Copy: Stephanie Clendenin, Director  
Sarah Lowell

## AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS

### DEPARTMENT OF SOCIAL SERVICES

Notice is hereby given that the California Department of Social Services (CDSS) maintains an index of cases CDSS has designated as precedential decisions. The index is available on the Internet at <http://www.cdss.ca.gov/inforesources/Community-Care-Licensing/Decisions-Relied-Upon-as-Precedent>.

This notice is published pursuant to California Government Code section 11425.60, subdivision (c).

<sup>2</sup> Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

<sup>3</sup> See also *Roth v. Department of Veterans Affairs*, (1980) 110 Cal. App.3d 14, 19; 167 Cal.Rptr. 552, 557.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH THE SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

California Earthquake Authority  
File # 2020-1221-03  
Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.”

Title 02  
Amend: 56800  
Filed 01/25/2021  
Effective 02/24/2021  
Agency Contact: Niel Hall (916) 661-5558

California Horse Racing Board  
File # 2020-1207-06  
Workers Compensation Insurance Required/Program Training Prohibited

This action prohibits program training and authorizes stewards to suspend or fine licensees engaged in program training.

Title 04  
Amend: 1501, 1502  
Filed 01/21/2021  
Effective 04/01/2021  
Agency Contact:  
Nicole Lopes-Gravely (916) 263-6397

CalSavers Retirement Savings Board  
File # 2021-0115-02  
CalSavers Retirement Savings Program Regulations Amendments

This emergency action amends and adopts regulations regarding the CalSavers Retirement Savings Program to change the default investment option, clarify the process for enforcing employer compliance, reduce the minimum contribution amounts for non-payroll contributions, and amend the frequency for

recurring non-payroll contributions. This is a deemed emergency under Government Code section 100048.

Title 10  
Adopt: 10008  
Amend: 10000, 10005, 10006, 10007  
Filed 01/25/2021  
Effective 01/25/2021  
Agency Contact: Eric Lawyer (916) 838-2869

Dental Board of California  
File # 2020-0810-01  
Substantial Relationship Criteria and Criteria for Rehabilitation

In this action, the Dental Board adopts criteria to be used in determining whether a crime, professional misconduct, or other act is substantially related to the professional practice of its licensees for purposes of license denial, suspension, or revocation. The action adopts criteria for determining whether an applicant for a license, or for reinstatement of a license, or for the modification or termination of probation of a license, has been rehabilitated subsequent to a criminal conviction, professional misconduct, or other act. The action also adopts criteria for determining whether a licensee has been rehabilitated, subsequent to a criminal conviction, professional misconduct, or other act, when considering whether to suspend or revoke his/her license.

Title 16  
Amend: 1019, 1020  
Filed 01/22/2021  
Effective 01/22/2021  
Agency Contact: Gabriel Nevin (916) 263-2027

Department of Justice  
File # 2020-1207-07  
Electronic Recording Delivery System (ERDS)

In this regular rulemaking action the Department of Justice amends the security requirements for county recorder computer workstations for the Electronic Recording Delivery System.

Title 11  
Amend: 999.138  
Filed 01/21/2021  
Effective 01/21/2021  
Agency Contact: Kevin Sabo (916) 210-7639

Department of Managed Health Care  
File # 2021-0115-01  
Summary of Dental Benefits and Coverage Disclosure Matrix

The Department of Managed Health Care submitted this emergency action to adopt a regulation that implements Health and Safety Code section 1363.04, which

requires the department to develop a uniform benefits and coverage disclosure matrix that must be used by health care service plans that issue, sell, renew, or offer a contract that covers dental services.

Title 28  
Adopt: 1300.63.4  
Filed 01/25/2021  
Effective 01/25/2021  
Agency Contact: Fabiola Murillo (916) 324-8176

Fair Employment and Housing Council  
File # 2021-0107-02  
Changes Without Regulatory Effect to the California Family Rights Act

This action without regulatory effect removes surplus verbiage to correct a repeated syntax error.

Title 02  
Amend: 11091, 11092, 11093  
Filed 01/21/2021  
Agency Contact:  
Kara Brodfueherer (916) 207-7959

Medical Board of California  
File # 2020-0812-01  
Substantial Relationship and Rehabilitation Criteria

This action establishes criteria for the Medical Board of California (the Board) to consider in determining whether a crime, professional misconduct, or other act committed by an applicant or licensee is substantially related to the qualifications, functions, or duties of the licensed profession when deciding whether to deny, suspend, or revoke a license. The action also establishes criteria for the Board to consider in evaluating whether such applicant or licensee has been rehabilitated since a criminal conviction or other act leading to denial, suspension, or revocation of a license or when considering a petition for reinstatement of a suspended or revoked license.

Title 16  
Amend: 13004, 1309, 1355.3, 1360, 1360.1, 1360.2  
Repeal: 1379.68, 1379.70, 1379.72  
Filed 01/21/2021  
Effective 01/21/2021  
Agency Contact: Kerrie Webb (916) 263-2389

Office of Environmental Health Hazard Assessment  
File # 2020-1211-01  
Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

This file and print request by the Office of Environmental Health Hazard Assessment updates subdivision (c) of section 27001 to identify Bisphenol

A (BPA) as a chemical causing developmental type reproductive toxicity. This action is exempt from the Administrative Procedure Act pursuant to Health and Safety Code section 25249.8.

Title 27  
Amend: 27001  
Filed 01/25/2021  
Effective 12/18/2020  
Agency Contact: Tyler Saechao (916) 327-3015

Secretary of State  
File # 2020-1208-01  
Business Entity Names

In this rulemaking action the Secretary of State aligns its regulations with the statutory changes made in Senate Bill 522 (Stats. 2020, Chapter 361). The regulatory amendments change the “deceptively similar” and “substantially the same as” standards for corporate proposed names to a “distinguishable in the records” of the Secretary of State standard.

Title 02  
Amend: 21000, 21001, 21001.1, 21001.3, 21002, 21004, 21005 [renumbered as 21003], 21005.5 [renumbered as 21004], 21006 [renumbered as 21005], 21008 [renumbered as 21006]  
Repeal: 21003, 21004, 21004.5,  
Filed 01/21/2021  
Effective 01/21/2021  
Agency Contact: Susan Lapsley (916) 653-7244

Superintendent of Public Instruction  
File # 2021-0112-03  
Foster Youth Local Complaint Time Line

In this emergency action, the State Superintendent of Public Instruction adopts a regulation to create an exception to the one-year timeframe established in section 4630 of title 5 of the California Code of Regulations. Section 4630 requires Uniform Complaint Procedures (UCP) complaints to be filed no later than one year from the date the alleged violation occurred. The exception to this time frame applies to UCP complaints related to the educational rights of foster youth.

Title 05  
Adopt: 4630.5  
Filed 01/22/2021  
Effective 01/22/2021  
Agency Contact: Lorie Adame (916) 319-0860



**PRIOR REGULATORY  
DECISIONS AND CCR  
CHANGES FILED WITH THE  
SECRETARY OF STATE**

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